

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION

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RODNEY D. PIERCE, et al,

Plaintiffs,

vs.

4:23-CV-193-D-RN

THE NORTH CAROLINA STATE BOARD OF ELECTIONS, et al,

Defendants.  
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FEBRUARY 3, 2025  
BENCH TRIAL - DAY 1  
BEFORE THE HONORABLE JAMES C. DEVER III  
UNITED STATES DISTRICT JUDGE

AMY M. CONDON, CRR, RPR, CSR  
Official Court Reporter  
United States District Court  
Raleigh, North Carolina  
Stenotype with computer-aided transcription

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1 - 103 and 105 - 117	5
1, 2, 19, 20, and 114	156
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1 (Monday, February 3, 2025, commencing at 10:00 a.m.)

2 **P R O C E E D I N G S**

3 THE COURT: Good morning, and welcome to the United  
4 States District Court for the Eastern District of North  
5 Carolina.

6 We're here today to begin the trial in Rodney Pierce  
7 versus the North Carolina State Board of Elections. Case  
8 Number 4:23-CV-193.

9 Is there any preliminary matters from the plaintiffs  
10 before we begin?

11 MR. JONES: One matter before we call our first  
12 witness. We'd just like to move the admission of the joint  
13 exhibits.

14 THE COURT: They'll be received.

15 MR. JONES: One small caveat, Your Honor. We were  
16 informed this morning that Joint Exhibit 104, the copy that  
17 you have, is the wrong version. So we're going to swap that  
18 one out either later today or first thing tomorrow morning.

19 So for now we'll move the admission of Joint  
20 Exhibits 1 through 103 and Joint Exhibits 105 through 117.

21 THE COURT: They'll be received.

22 (Joint Exhibits Nos. 1 - 103 and 105 - 117 were admitted  
23 into evidence.)

24 THE COURT: Anything from the defense?

25 MS. PROUTY: No, Your Honor.

## G.K. Butterfield - Direct Examination

1 THE COURT: All right. Plaintiffs may call their  
2 first witness.

3 MR. SPEAS: The Plaintiffs will call G.K.  
4 Butterfield to the stand, Your Honor.

5 GEORGE K. BUTTERFIELD, JR.,  
6 having been duly sworn, testified as follows:

7 THE COURT: Good morning. Please have a seat.

8 THE WITNESS: Thank you.

9 THE COURT: You may examine the witness.

10 DIRECT EXAMINATION

11 BY MR. SPEAS:

12 Q. Good morning, Mr. Butterfield. Where did you grow up?

13 A. I grew up in Wilson, North Carolina.

14 Q. And you've had a long career in the law and public  
15 service. Would you review that for us this morning a little  
16 bit?

17 A. Well, I'm 77 years old. That's a long history.

18 I would start in -- I graduated from high school in 1965.  
19 Attended college at North Carolina College of Durham, two  
20 years in the Army, and then three years of law school.

21 After returning -- after graduating from law school, I  
22 returned to my home community and became a practicing  
23 attorney. I joined forces with two young men, Quentin Sumner  
24 and Milton Fitch and the three of us practiced law for some  
25 12, 13 years.

## G.K. Butterfield - Direct Examination

1 In 1988 I was elected as a resident Superior Court judge,  
2 stayed on the trial bench until 2001 when I was appointed by  
3 Governor Easley to the State Supreme Court. After losing the  
4 general election in 2002, Governor Easley appointed me as a  
5 special Superior Court judge where I remained until I was  
6 elected to Congress in July of 2004.

7 Q. Where are you presently employed?

8 A. I'm affiliated with a firm in Washington, D.C. The name  
9 of it is McGuire Woods. I'm not on the law firm side; I'm on  
10 the consulting side. So we refer to it as McGuire Woods, LLC.

11 Q. So you've been licensed as a lawyer for about 50 years?

12 A. More or less. I would say 49. I missed it the first  
13 time around, so it would have been 50 had I...

14 Q. And you spent I believe 12 or 13 years on the Superior  
15 Court bench?

16 A. Thirteen years.

17 Q. And you spent 10 terms in Congress; is that correct?

18 A. Yes. The reason I hesitate is because I was elected in a  
19 special election, and I don't know how to count that.

20 Q. Okay. Congressman Butterfield, the focus of this case is  
21 northeastern North Carolina. And the parties have stipulated  
22 in stipulation -- in stipulated fact paragraph number 33 that  
23 there's a set of -- could we put that up on the screen? --  
24 that there are eight counties, Congressman, in northeastern  
25 North Carolina that have populations at or above or near

## G.K. Butterfield - Direct Examination

1 50 percent; and they are Vance, Warren, Northampton, Hertford,  
2 Halifax, Bertie, Edgecombe, Martin, and Washington. Those  
3 counties are the focus of this lawsuit.

4 Have you heard this set of counties referred to as the  
5 North Carolina Black-Belt counties?

6 A. I've heard that expression over the years. My preferred  
7 term is the Black Second.

8 Q. Could you tell the Court a little bit about the origin of  
9 the Black Second?

10 A. I can. The 15th Amendment to the Constitution was  
11 ratified on February 3rd, 1870. Interestingly enough, 155  
12 years ago today.

13 After the 15th Amendment, the -- what was ratified, the  
14 state was required to -- to prepare a map of congressional  
15 districts, and the very -- the Second District was in  
16 northeastern North Carolina. It was referred to as the Second  
17 Congressional District. It started in Vance -- well, Warren  
18 County and meandered its way down to Craven and Jones County.  
19 It was the Second District. Most of those counties were  
20 majority African American, which meant that the African  
21 American community had an ability to elect their preferred  
22 congressman.

23 And during a period of Reconstruction and  
24 post-Reconstruction four African Americans were elected to  
25 Congress during that period.



## G.K. Butterfield - Direct Examination

1        So the whole Reconstruction era in my mind is divided  
2 into three decades: The decade of '70s, '80s, and '90s. And  
3 each decade was different and they were very interesting.

4        The first decade was African American men registered as  
5 Republicans; women did not have the right to vote. African  
6 American men registered in very large numbers and in most of  
7 the Black-Belt counties African Americans outnumbered White --  
8 Whites in those counties. And therefore, they were in a very  
9 good position to influence electoral outcomes.

10       The period of the '80s, 1880s was a little different,  
11 that was when Hayes and Tilden had the deadlock electoral  
12 college in 1876 and there was a period during the 1870s of  
13 some retrenchment, some abandonment of African American  
14 progress. There were efforts by the legislature to take away  
15 local control and to -- for the legislature to appoint judges  
16 at the local level who would then appoint county commissioners  
17 thereby depriving African Americans in those communities the  
18 ability to control the flow of money in their counties.

19       The decade of the '90s was about fusion politics. It was  
20 an interesting coalition between farmers, White farmers, and  
21 African American Republicans, and it's referred to as the  
22 Fusion Movement, and that movement was somewhat progressive.  
23 It resulted in African Americans being elected to the state  
24 legislature in very, very large numbers elected as county  
25 commissioners; but finally, all of that came to an end in 1900

## G.K. Butterfield - Direct Examination

1 when the literacy test was passed by the General Assembly.

2 Q. Congressman Butterfield, in the years you were in  
3 Congress, were the folks in these Black Second counties your  
4 constituents?

5 A. My constituents and my friends.

6 Q. And you campaigned in these counties 10 separate times or  
7 maybe 11 separate times; is that correct?

8 A. Even more, yes, absolutely, if you count primaries and  
9 general elections.

10 Q. Okay. Did your legal practice, the 13 years or so you  
11 were in practice, include representing plaintiffs in these  
12 counties in northeastern North Carolina?

13 A. Plaintiffs and defendants. My law firm was in Wilson,  
14 but I had a regional law practice which took me into Rocky  
15 Mount and Roanoke Rapids and Williamston and Greenville and  
16 other places in northeastern North Carolina, yes.

17 Q. Did your legal practice in those years, Congressman,  
18 include representing plaintiffs in voting rights lawsuits?

19 A. Yes.

20 Q. Could you tell the Court a little bit about those suits  
21 in which you were involved?

22 A. Yes. My first experience was with a man named Horace  
23 Johnson who was a Black farmer in Halifax County who had run  
24 for a seat on the Board of County Commissioners, the board was  
25 all White at-large elections. Horace Johnson walked into my

1 law office in Wilson one Wednesday morning and said he had  
2 been defeated in the election, the primary election the  
3 preceding day and he felt that it was fraudulent. And I've  
4 always doubted people when they have extraordinary stories and  
5 so I wanted to see it for myself. I traveled to Halifax  
6 County, walked into the Board of Elections office and there  
7 were live paper ballots spread out on the table, and I could  
8 literally see the checkmarks on the ballots, and so I  
9 understood the concerns that Horace Johnson had.

10 We filed a complaint with the County Board of Elections,  
11 had a two-day hearing, unsuccessful. We then appealed to the  
12 Halifax County Superior Court -- excuse me. To the North  
13 Carolina State Board of Elections, unsuccessful, and then to  
14 the Superior Court of Wake County, James H. Pugh-Bailey  
15 presiding, and we did not prevail at the Superior Court level.

16 Because of that we were determined to continue the fight  
17 and that's when I associated with a law firm in Charlotte, it  
18 was referred to as the Chambers Ferguson Stein Wallace &  
19 Atkins Law Firm. The law firm had a working relationship with  
20 the NAACP Legal Defense Fund and so we combined our efforts  
21 and concentrated on Halifax County.

22 We then -- I think we may have pursued a Section 5 claim  
23 initially in Halifax County regarding the failure to obtain  
24 preclearance in several election changes and we were not  
25 successful. And after that we filed a Section 2 claim in the

## G.K. Butterfield - Direct Examination

1 Eastern District entitled, "Horace Johnson versus County of  
2 Halifax." The case was vigorously defended by the county; but  
3 at the last moment, we were able to settle it.

4 Q. And did you have the opportunity to litigate voting  
5 rights cases in other counties in northeastern North Carolina?

6 A. Yes. There was the case of Haskins versus County of  
7 Wilson which is my home county. I telephoned the Department  
8 of Justice one day, Voting Rights Section and talked to a  
9 young lady named Marianne Jackman and told her that African  
10 Americans in Wilson County were unable to elect their  
11 preferred candidates to the Board of Commissioners and asked  
12 her was there anything we could do about it and she asked me  
13 if I had ever heard of the Voting Rights Act, particularly  
14 Section 5. I told her I had, but didn't fully understand it  
15 and she asked me had there been any voting changes since 1964.  
16 I told her there had; there had been a move to staggered  
17 terms, there had been maybe an increase in the size of the  
18 board. And she mentioned that these were instances in which  
19 the county was required to obtain preclearance and if I would  
20 give her a few moments she would look it up. She returned to  
21 the telephone and said they had no record of preclearance.  
22 And because of that, the Department of Justice interposed an  
23 objection to any future elections in the county until these  
24 changes were precleared.

25 The changes were eventually precleared, to my

1 disappointment, but thereafter we then filed a Section 2 claim  
2 against the county. At that time, the Courts were requiring  
3 proof of intent in order to prevail on a Section 2 claim and  
4 after filing the suit, we had some concern about whether or  
5 not we could meet the standard of proof that was required  
6 under Mobile versus Bolden so we just slowed down or  
7 prosecution of that case until 1982 after there was a  
8 bipartisan amendment passed by the Congress that lowered the  
9 threshold, the standard of proof in Section 2 claims from  
10 intentional discrimination to discriminatory effects. And  
11 that's -- those are the senate factors that we all know so  
12 much about that came out of that hearing.

13 So after the threshold, the threshold was lowered from  
14 intentional to discriminatory effect, the county settled the  
15 case and -- Judge Franklin Dupree, Jr. approved the consent  
16 settlement which divided the country into seven single-member  
17 districts. And now because of that we have three  
18 majority-minority districts and four other districts, and we  
19 have a very diverse Board of Commissioners.

20 Q. Congressman, did your experience as a --

21 A. There were other counties.

22 Q. Okay. I'm sorry.

23 A. And I won't be as elaborate on these others as I was on  
24 these two.

25 The other one was Nash County, I forgot the plaintiff's

1 name. The other one was Granville County, McGee versus  
2 Granville. The other was Vance County which was Ellis versus  
3 County of Vance. There was another one in Person County that  
4 we got involved with. And there may be one or two others.  
5 There was the Town of Enfield in Halifax County that we filed  
6 a claim, actually a Section 5 claim.

7 Q. Did all of these experiences as a lawyer in your years in  
8 Congress give you an opportunity to become familiar with the  
9 comparative economic educational conditions of Black and White  
10 citizens in these counties?

11 A. Mr. Speas, through my interactions as a private lawyer  
12 and as a Superior Court judge and as Congressman for 18 years,  
13 I had intimate involvement with all of the communities in my  
14 congressional district and became quite familiar with these  
15 patterns.

16 Q. What did you observe with regard to the economic and  
17 educational conditions of Black and White citizens in those  
18 counties?

19 A. It's stark. Every indicator that you would look at,  
20 whether it's education, employment, wealth, poverty, any  
21 indicator that you would choose to look at there is a stark  
22 difference between Black and White in each one of the counties  
23 in the Black Belt unfortunately, and it doesn't seem to be  
24 improving.

25 Q. Okay. Did your experiences as a lawyer and a member of

## G.K. Butterfield - Direct Examination

1 Congress also provide you an opportunity to observe the voting  
2 patterns of Black and White citizens in northeastern North  
3 Carolina?

4 A. I have.

5 Q. And what did you observe in that regard, Congressman?

6 A. Racially polarized voting is very hard to explain.

7 MS. PROUTY: Objection, Your Honor. I don't want to  
8 interrupt Congressman Butterfield, but I do want to lodge an  
9 objection based on Rule 701 and 702.

10 Plaintiffs did not disclose him as an expert witness  
11 in this case or disclose any analyses from him that would  
12 support conclusions about the levels of or existence of  
13 racially polarized voting.

14 Rule 701(c) limits lay witnesses that are -- to  
15 opinions that are based on scientific, technical, or other  
16 specialized knowledge within the scope of 702. So conclusions  
17 about the existence of and levels of racially polarized voting  
18 are opinions that acquire technical analysis and specialized  
19 knowledge. They're the subject of several expert reports in  
20 this case, including reports from plaintiffs.

21 If plaintiffs wanted to elicit testimony from  
22 Congressman Butterfield about the levels or significance of  
23 racially polarized voting in this case, they should have done  
24 that in accordance with the Court's deadlines.

25 THE COURT: Mr. Speas.

## G.K. Butterfield - Direct Examination

1 MR. SPEAS: Your Honor, Congressman Butterfield had  
2 20 years' experience as a politician. Politicians understand  
3 the voting patterns of their constituents.

4 If he's allowed to testify, Congressman Butterfield  
5 will explain his method of determining what the voting  
6 patterns were and how he applied it to his own campaigns.

7 THE COURT: Well, I won't accept it as opinion  
8 testimony, but I will allow him to testify within reason.

9 Go ahead, Mr. Speas.

10 MR. SPEAS: Thank you, Your Honor.

11 BY MR. SPEAS:

12 Q. Congressman, what method did you use to evaluate the  
13 voting patterns of Black and White citizens in northeastern  
14 North Carolina?

15 A. I concede that my methodology was not scientific, and so  
16 I offer this as lay testimony based upon 20 or more years of  
17 being involved in electoral politics in the region.

18 After each election I would do a back-of-the-envelope  
19 analysis, that's the best way I can describe it. I would find  
20 a homogeneous precinct in a given county in the district that  
21 would be nearly all White or nearly all African American, and  
22 there are precincts in the district that fall into those two  
23 categories. I would look at my performance in a nearly all  
24 White precinct and my performance would be dismal, 10, 15,  
25 18 percent. I would look at my performance in nearly all



1 African American precincts and it would be 90 percent plus.

2 I would then look at other candidates to see if there were  
3 similarities, and I would do it based on their race. I would  
4 look at a gubernatorial candidate, for example, or a local  
5 candidate who I was running at large in a county, and I came to  
6 the conclusion that there is significant polarization between  
7 the races in elections.

8 Q. Was this pattern more stark in some counties than others?

9 A. It was.

10 Q. Could you explain where it might have been more stark and  
11 where it might have been less stark?

12 A. Let me start with Gates County, for example. The African  
13 American Voting Age Population in Gates County is I think in  
14 the range of 40 percent. I didn't win Gates County. Even  
15 though the African American vote was overwhelming for me, I  
16 would not win Gates County which led me to believe that I did  
17 very poorly among White voters.

18 If you were to look at Pitt County as an example. Pitt  
19 County is more progressive, has a university, hospital,  
20 medical school, I would do better in those precincts as  
21 opposed to Gates County.

22 I would then go down to Greene County which is 45 percent  
23 African American and you would think that I would do -- I  
24 would do quite well in Greene County, and I did not.

25 Q. What about in Halifax and Bertie counties?

1 A. Those counties are interesting. Both of those counties  
2 are heavily African American, but there is some degree of  
3 coalition building in those two counties. It's very minimal,  
4 but there are coalitions in those two counties that are a  
5 little different from the other counties. But yet, there is  
6 still severe polarization in my opinion in those two counties.

7 Bertie County is greater than 60 percent. Halifax as  
8 well. I might say that now in Halifax County because it's --  
9 because of its overwhelming number of African American voters,  
10 African Americans now constitute -- and I know Commissioner --  
11 Former Commissioner Pierce may testify and may correct me on  
12 this, but I think four or five county commissioners are  
13 African American.

14 Q. Congressman, in your years in Congress, did you estimate  
15 a Black Voting Age Population percentage that was needed in  
16 these counties in order for Black candidates to have a  
17 reasonable opportunity to get elected?

18 MS. PROUTY: Same objection, Your Honor.

19 THE COURT: I would sustain it as to just any  
20 candidate. There's a lot of elections that take place in a  
21 lot of counties. So I'll sustain it as to the form of the  
22 question.

23 MR. SPEAS: All right, sir.

24 BY MR. SPEAS:

25 Q. What percentage did you need in your election campaigns

1 to have a reasonable opportunity to be elected?

2 A. Beginning in 2004 when I was first elected it is my  
3 belief that the candidate preferred by the minority community,  
4 by the African American community probably needed 55 percent.  
5 That has improved over the years. It is now in the range of  
6 47 to 50 percent depending upon which county you're  
7 referencing. Greenville, Pitt County I would say more in the  
8 47 percent range; Gates County more in the 50 percent range.

9 Q. Have you observed whether this percentage has increased  
10 or decreased in recent years?

11 A. It was getting better, Mr. Speas, until about three or  
12 four years ago and it has now somewhat leveled off. It is not  
13 improving.

14 Q. Congressman, the defendant in this case has suggested  
15 that the difference between the voting patterns of Black and  
16 White voters reflects political polarization rather than  
17 racial polarization. Do you think that's correct?

18 A. Not totally. I think there is some political  
19 polarization in electoral politics, but that doesn't fully  
20 explain it.

21 The attitudes and the opinions of White voters are  
22 very -- in opposite to some of the views of African American  
23 voters, they look at the world differently because their  
24 experiences have been different.

25 African American voters are concerned about issues

1 involving education, employment, voting opportunities, and  
2 other issues that affect the family. Not to say that that  
3 doesn't apply also in White communities, but African American  
4 voters are very concerned about economic issues and probably  
5 less about social issues. So the attitudes are different  
6 between the races and therefore they perform differently at  
7 the ballot box and they choose their preferred candidates  
8 based upon their needs and their experiences with the  
9 political party.

10 I often mention that, you know, prior to FDR, African  
11 Americans were Republicans and after the New Deal, African  
12 Americans migrated to the Democratic Party because they felt  
13 that the Democratic Party was more aligned with their  
14 interests. They were aligned with the Republican Party at the  
15 turn of the century because of the 13th Amendment and the  
16 Emancipation Proclamation by Republican President Abraham  
17 Lincoln.

18 And so African Americans are not connected with a  
19 political party because of any -- any allegiance, any  
20 unfounded allegiance. It's not a connection that is  
21 unbreakable. It depends on the issues.

22 Q. Congressman, legislative responsiveness to the needs of  
23 the minority community is an issue in these kind of cases.  
24 Have you made any observation about the responsiveness of the  
25 North Carolina General Assembly to the needs of the Black

1 citizens of North Carolina?

2 A. I have. I followed the work of the General Assembly and  
3 very disappointed with the responsiveness in education and  
4 community investment.

5 Even Medicaid expansion was an issue over time. North  
6 Carolina was one of the few states that did not expand the  
7 Medicaid program when it was offered under the Affordable Care  
8 Act. It has now been expanded, but it took years of  
9 negotiations under Governor Cooper and Speaker Moore and  
10 Berger to get it done. And so the legislature, in my opinion,  
11 has been very unresponsive to issues that disproportionately  
12 affect the African American community.

13 Our schools in northeastern North Carolina are  
14 underfunded. I mean, Leandro talked about it for years, the  
15 Leandro case. And they're still underfunded. If you were to  
16 compare the public schools of Halifax County with the public  
17 schools of Orange County, Orange County, vast difference, vast  
18 difference, and the legislature can do something about that  
19 and they have not.

20 MR. SPEAS: No other questions at this time, Your  
21 Honor.

22 THE COURT: Thank you, Mr. Speas.

23 Cross-examination.

24 MS. PROUTY: Thank you.

25 CROSS-EXAMINATION

1 BY MS. PROUTY:

2 Q. Hello, Congressman Butterfield.

3 A. Good morning.

4 Q. My name is Erika Prouty. I represent the Legislative  
5 Defendants in this case. Thank you for being here today.

6 I understand from your testimony that you represented  
7 North Carolina's First Congressional District from 2004 to  
8 2022. Is that correct?

9 A. Yes.

10 Q. The First Congressional District has a long history of  
11 being represented by African Americans; is that correct?

12 A. No.

13 Q. Well, before you, Frank Ballance represented the First  
14 Congressional District?

15 A. For 18 months.

16 Q. And before Mr. Balance, Eva Clayton represented the First  
17 Congressional District from 1992 to 2003, correct?

18 A. Yes, 10 years.

19 Q. And the configuration of the First Congressional District  
20 remains the same in elections from 2004 to 2010; is that  
21 correct?

22 A. I think that's correct, yes.

23 Q. And would you agree with me that none of those general  
24 elections were particularly close?

25 A. They were not.

## G.K. Butterfield - Cross-Examination

1 Q. In 2004, you won nearly 64 percent of the vote, correct?

2 A. I don't deny that, yes.

3 Q. Do you have any reason to dispute that number?

4 A. The Republican Party had difficulty recruiting credible  
5 candidates and formidable candidates to run.

6 Q. But that 64 percent number sounds right?

7 A. Yes.

8 Q. And in 2006 you were unopposed?

9 A. I think you're right, yes.

10 Q. And in 2008 you won about 70 percent of the vote,  
11 correct?

12 A. Yes.

13 Q. And in 2010 you won about 59 percent of the vote; is that  
14 correct?

15 A. Yes.

16 Q. And the district that you ran in for all of those  
17 elections was about 47 percent African American Voting Age  
18 Population; is that correct?

19 A. I haven't looked that up, but I accept -- I accept that,  
20 yes.

21 Q. And after the 2010 election, the First Congressional  
22 District was redrawn; is that correct?

23 A. Yes.

24 Q. And you ran for re-election in that district in 2012 and  
25 2014, correct?

## G.K. Butterfield - Cross-Examination

1 A. I believe that's when Durham County was added to the  
2 district, yes.

3 Q. And would you agree with me that you won those general  
4 elections in 2012 and 2014 by substantial margins?

5 A. With the addition of Durham County, yes.

6 Q. 2012 you won about 75 percent of the vote?

7 A. With the addition of Durham County, yes.

8 Q. And in 2014 you won about 73 percent of the vote,  
9 correct?

10 A. Yes.

11 Q. And this district was 52.65 percent African American  
12 Voting Age Population, correct?

13 A. I accept that, yes.

14 Q. And at that time you believed that 52.65 African American  
15 Voting Age Population was excessive and unnecessary, correct?

16 A. I thought it was not necessarily required at 52.65.

17 Q. You also thought it was excessive, correct?

18 A. I don't know about excessive. I thought it was  
19 unnecessary.

20 Q. Do you recall testifying in a case titled Harris versus  
21 McCrory that the 52 percent was excessive?

22 A. I don't recall particularly, but I accept it. If you  
23 have the transcript, I accept it.

24 Q. We do have a copy of the transcript we can pull up for  
25 you.



1 A. Yes.

2 Q. It would be page 173.

3 A. Yes.

4 Q. It'll be lines -- starting -- the question is at line 2:

5 Based on your years in electoral politics in eastern  
6 North Carolina, is that number necessary to allow African  
7 American citizens to elect their candidate of choice?

8 And line 5 you say: No, it's not necessary; it's  
9 excessive.

10 Do you see that?

11 A. Yes, that is my -- that was my testimony.

12 Q. And I heard you reference today that you believed  
13 55 percent was necessary in 2004, was that your testimony?

14 A. When I first started voting rights litigation in the  
15 '80s, 1980s, the experts told us that 65 percent was necessary  
16 in order to level the playing field. That improved over the  
17 years and eventually I began to embrace 55 percent as being  
18 the benchmark of fairness, and then I lowered that number even  
19 more.

20 Q. Okay. And you lowered that number to about 47 percent;  
21 is that right?

22 A. Yes, depending upon the jurisdiction. In Pitt County,  
23 47 percent would be adequate. In Wake County it would be  
24 adequate.

25 Q. And that's --

1 A. In Gates County it would not be adequate.

2 Q. And that's based on your personal opinion, correct?

3 A. Of course.

4 Q. You've never analyzed election data or turnout data to  
5 make that determination of what percent African American  
6 Voting Age Population is required in a jurisdiction, correct?

7 A. I've read reports and treatises and all sorts of  
8 publications, but I do not hold myself out by any means as an  
9 expert. I have no training in this field except just using  
10 homogeneous precincts as the measurement for polarization.  
11 And of course the experts may laugh at that, but that's the  
12 way I do it.

13 Q. And you previously believed that a qualified candidate  
14 who's the preferred candidate of the African American  
15 community could be elected to the First Congressional District  
16 even if that African American Voting Age Population was  
17 reduced from 47 percent; is that correct?

18 A. It would be difficult, but not impossible. But it would  
19 be very difficult because the First District now is without  
20 Pitt County and it now includes Chowan, Pasquotank, Carter  
21 counties and polarization in those areas I believe may be  
22 severe and so I'm not sure if 47 percent Voting Age Population  
23 in the 1st District today would level the playing field  
24 between the candidates if the preferred candidate of the  
25 African American community were -- was a candidate.

1 Q. But you previously believed that 45 percent may be more  
2 difficult but would still be competitive; is that right?

3 A. In this new political environment it would be very  
4 competitive. It would be -- it would unquestionably be very  
5 competitive. 45 percent would put the preferred candidate of  
6 the minority community in a danger zone.

7 Q. You testified earlier about your opinions of the levels  
8 of racially polarized voting. Do you recall that testimony?

9 A. Today or previously?

10 Q. Today.

11 A. Yes, yes.

12 Q. And you've never performed a statistical analysis of  
13 racially polarized voting in North Carolina; is that right?

14 A. On the back of an envelope I have.

15 Q. I heard you refer to it as back-of-an-envelope  
16 calculation, right?

17 A. Yes.

18 Q. You would agree that those calculations are far from the  
19 way an expert would do that analysis, right?

20 A. Of course.

21 Q. And you only did this analysis -- analysis in elections  
22 that you ran in, correct?

23 A. Not correct.

24 Q. Okay.

25 A. I'm sort of a statistical junkie. Junkie is not the best

1 word for it, but enthusiast. And so with the advent now of  
2 the Internet and the technology that we have, it's very easy  
3 to run a lay analysis.

4 I have access to -- I had access to the voting system and  
5 I could run a number of registered voters in a given precinct.  
6 I could run those by race, by party, who actually voted in a  
7 particular election, and I could actually put them on a  
8 spreadsheet and do the comparison right on my home computer.  
9 And I would do it for races other than mine just out of  
10 curiosity.

11 Q. You would agree with me that wasn't a scientific  
12 analysis, right?

13 A. It was not a scientific analysis.

14 Q. You never performed, say, an ecological inference  
15 analysis; is that right?

16 A. I don't know what that is. I've read about it, but I  
17 don't understand it.

18 Q. And you did not perform one on any of the counties at  
19 issue in this case for today's testimony; is that right?

20 A. Not in preparation for this case.

21 Q. You also testified about -- I apologize. Let me start  
22 over.

23 The First Congressional District was ultimately redrawn  
24 for the 2016 election. Do you recall that?

25 A. Sounds right.

## G.K. Butterfield - Cross-Examination

1 Q. And you ran for re-election in 2016 and 2018 in this new  
2 version of the First Congressional District, correct?

3 A. Yes.

4 Q. And you continued to win by significant margins, correct?

5 A. I continued to win, but each election I performed less  
6 than the previous election.

7 Q. Okay.

8 A. And I attributed that to gerrymandering.

9 Q. In 2016 you won about 68 percent of the vote; does that  
10 sound right?

11 A. Yes.

12 Q. And in 2018, you won 69 percent of the vote; is that  
13 right?

14 A. Yes.

15 Q. And this district was 44.5 percent African American  
16 Voting Age Population?

17 A. Yes, but remember I was a 16-year incumbent who had  
18 financial resources that my opponent did not have and the name  
19 recognition that my opponent did not have, so I had performed  
20 quite well.

21 Q. And the First Congressional District was again redrawn in  
22 2019; is that right?

23 A. Yes.

24 Q. And you ran for re-election in this district in 2020,  
25 correct?

1 A. That was my final election, yes.

2 Q. And you won 54 percent of the vote, correct?

3 A. Yes.

4 Q. You did not run for re-election in 2022; is that right?

5 A. I did not.

6 Q. Don Davis instead ran in 2022 in the First Congressional  
7 District, correct?

8 A. Yes.

9 Q. Mr. Davis is African American, correct?

10 A. Yes.

11 Q. Mr. Davis is a Democrat, correct?

12 A. Yes.

13 Q. Would you agree that it's fair to say many factors go  
14 into winning an election?

15 A. I agree there are multiple factors that are involved in  
16 winning an election, and finance would be a major contributor  
17 to the success of a candidate.

18 Q. I'm sorry. Could you repeat that?

19 A. Fundraising is a major contributor to electoral success,  
20 and Mr. Davis was able to engage successfully in fundraising;  
21 something that I was not able to do as successfully.

22 Q. The First Congressional District was 41.23 percent  
23 African American Voting Age Population in 2022; is that  
24 correct?

25 A. That sounds correct.

1 Q. And Mr. Davis won re-election in November 2024; is that  
2 correct?

3 A. My recollection is he narrowly won. He engaged in a 24/7  
4 campaign traveling all over the country in fundraising. Ended  
5 up raising in excess of \$5 million, something that I could not  
6 do and it was against a very formidable Republican female,  
7 military, a veteran opponent, and he won by one and a half  
8 percentage points.

9 Q. That district is currently 40.42 percent African American  
10 Voting Age Population; is that correct?

11 A. That sounds correct. But during the campaign Mr. Davis  
12 had to measure his public statements unlike when I served. I  
13 could be authentic in my public declarations and the positions  
14 that I took on issues without any fear of retributions from  
15 the opposition. Mr. Davis found himself in a different  
16 position.

17 Q. Okay.

18 A. Because there were national issues that were swirling  
19 around that I never had to be involved in. Immigration,  
20 abortion, and others; border enforcement. Those were issues  
21 that I did not particularly have to deal with during my  
22 elections, but he did. And so he won by one and a half  
23 percentage points.

24 Q. Thank you, Congressman Butterfield. I have no more  
25 further questions for you.

## G.K. Butterfield - Redirect Examination

1 THE COURT: Mr. Speas, anything else?

2 MR. STEED: No questions, Your Honor.

3 THE COURT: I'm sorry. State Board.

4 MR. STEED: Sorry. I said no questions, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. SPEAS:

7 Q. Congressman, you mentioned the addition of Durham County  
8 to your congressional district on one occasion. How did the  
9 addition of Durham County affect the voting patterns and the  
10 degree of racially polarized voting in your congressional  
11 district?

12 A. The General Assembly had to redraw the congressional  
13 lines. Senator Rucho called me to his office one day and  
14 explained to me in the presence of the staff that because of  
15 dwindling populations in northeastern North Carolina that it  
16 would be necessary to add an urban area to the First District  
17 so as to get to the ideal district size. Ideal district size  
18 at the time was 733,000 people.

19 Senator Rucho told me he had a choice of Wake County,  
20 Durham County, Guilford County. Asked me what I thought about  
21 it. And I -- chief of staff had warned me about being too  
22 verbal with the Senator because she had worked in the  
23 legislature and understood that sometimes your words could be  
24 taken out of context.

25 MS. PROUTY: Objection, Your Honor. Hearsay as to



1 the statements by his chief of staff.

2 THE WITNESS: Certainly.

3 THE COURT: Sustained.

4 THE WITNESS: So I told Senator Rucho that I thought  
5 Guilford County was absolutely unacceptable because of the  
6 distance, because of the dissimilarity between the two  
7 communities. And he said, Well, what about Raleigh or Durham?

8 MS. PROUTY: Objection, again, Your Honor, as to the  
9 statements by Senator Rucho.

10 THE COURT: Well, again, they're just being added  
11 for context of what the Congressman said. I'm not accepting  
12 them for the truth but just for the context of what he said.

13 THE WITNESS: Sure. I'll make it short and to the  
14 point.

15 So I did not take a position of Raleigh versus  
16 Durham. The following week the Senator invited me back to his  
17 office and showed me a map of Raleigh and informed me that  
18 Raleigh would be in the First Congressional District. And I  
19 asked him exactly where in Raleigh would the district be, and  
20 he rolled out the map and he couldn't get his bearings on the  
21 map. And so I leaned forward and said: Show me where the  
22 State Capital is so I can get context and the staffer  
23 identified the Capital. And then I said show me Memorial  
24 Auditorium and Shaw University so I can get the lay of the  
25 land, and we figured out where the auditorium and Shaw

1 University were located. And then I could see where he was  
2 talking about.

3 I then informed the Senator that I didn't have an  
4 opinion to offer; that the legislature needed to do what the  
5 legislature needed to do, and I left. And then when the  
6 report was submitted to the full General Assembly, it was  
7 reported that I had requested that Wake County be included in  
8 the district because I wanted Shaw University and the Capital  
9 in my district, which was absolutely untrue. So I complained  
10 about it vehemently because it was a mischaracterization of  
11 what I had said and done and that was when the General  
12 Assembly scrapped Wake County as a possibility and included  
13 two-thirds of Durham County in the district.

14 And so beginning with that reconfiguration, I then  
15 represented two-thirds of Durham County plus the traditional  
16 First Congressional District. And eventually I would get all  
17 of Durham County. I don't know which map that was, but I  
18 started off with two-thirds of Durham County and then the next  
19 iteration it went to all of Durham County.

20 Q. Congressman, you also mentioned Pitt County in your  
21 examination. How does including Pitt County or excluding Pitt  
22 County from a district affect racial polarization within a  
23 district?

24 THE COURT: From his congressional district?

25 MR. SPEAS: His congressional district.

1           THE WITNESS: Pitt County is very significant. The  
2 city of Greenville, Town of Bethel, the Town of Winterville,  
3 they're more progressive communities and polarized voting is  
4 not as severe in those municipalities as it is in rural Pitt  
5 County. But all in all when the votes are tallied in Pitt  
6 County, democratic candidates and minority candidates do  
7 fairly well in Pitt County. It has the university, the  
8 hospital, the medical school, good coalition building between  
9 the races in Pitt County. Pitt County I would characterize as  
10 a progressive community.

11           But under the map that's now in effect completely  
12 eliminated Pitt County from the First Congressional District  
13 and in its place added Pasquotank, Currituck, Chowan counties  
14 which are very unfriendly territory for minority candidates  
15 and democratic candidates. And so that weakened the position  
16 of the congressional candidate by removing Pitt County from  
17 the district.

18 BY MR. SPEAS:

19 Q. Based on your experiences, Congressman, if a person or a  
20 candidate wants to understand the Black Voting Age Population  
21 needed to elect a Black-preferred candidate, the outcome  
22 depends on which specific area or which specific counties are  
23 in the district; is that correct?

24 A. That is absolutely correct.

25 Q. Gates County is not Durham County, correct?

1 A. Correct.

2 Q. Pitt County is not Halifax County?

3 A. Correct.

4 Q. Pitt County is not Hertford County? Pitt County is not  
5 Warren County?

6 A. That is true, except to say, Mr. Speas, there is  
7 polarization in all of the counties in the First Congressional  
8 District. They are just variations.

9 Q. It's worse in some places than others?

10 A. Correct.

11 Q. Now, this back-of-the-envelope evaluation that you've  
12 done, have you shared that with people over the years?

13 A. Internally, perhaps with my staff I did.

14 Q. And with other candidates and people in the community?

15 A. Oh, yes. Candidates are always calling me for advice and  
16 to evaluate electoral outcomes and electoral projections.

17 Q. And do you believe your methodology, back of the envelope  
18 though it may be as, is effective?

19 A. In my world it is effective because if you take a  
20 precinct, a voting -- VTD I think y'all call it, a voting  
21 precinct, that is 98 percent White and you look at the  
22 electoral outcome and the African American preferred candidate  
23 gets 10 percent of the vote and you compare that to another  
24 precinct that is 90 percent African American and the African  
25 American candidate gets 90 percent of the vote, in my analysis

## R. Pierce - Direct Examination

1 that is polarization based on race.

2 MR. SPEAS: Thank you, Congressman. No other  
3 questions.

4 THE COURT: Anything else from the Defense or the  
5 State Board?

6 MS. PROUTY: No, Your Honor.

7 THE COURT: Thank you.

8 Thank you, Congressman. Please watch your step.  
9 There's a step up as you come off the witness stand and a step  
10 down through the gate.

11 THE WITNESS: Thank you.

12 THE COURT: The plaintiffs may call their next  
13 witness.

14 MS. MACKIE: Your Honor, the plaintiffs call Rodney  
15 Pierce.

16 RODNEY PIERCE,  
17 having been duly sworn, testified as follows:

18 THE COURT: You may examine the witness.

19 DIRECT EXAMINATION

20 BY MS. MACKIE:

21 Q. Good morning, Mr. Pierce. Can you state your address for  
22 the record?

23 A. Yes, ma'am. 171 Wood Glen Road, Roanoke Rapids, North  
24 Carolina.

25 Q. And that's in Halifax County?

## R. Pierce - Direct Examination

1 A. Yes, ma'am.

2 Q. How long have you lived in Halifax County?

3 A. Forty-four years.

4 Q. Are you registered to vote in Halifax County?

5 A. Yes, ma'am, I am.

6 Q. Since when?

7 A. Since 1996.

8 Q. And Mr. Pierce, have you voted regularly since you  
9 registered to vote in 1996?

10 A. Yes, ma'am, I have. I have never missed an election, a  
11 primary or general.

12 Q. What State Senate district do you reside in?

13 A. Currently Senate District 2.

14 Q. Mr. Pierce, would you tell the Court a little bit about  
15 growing up in Halifax County?

16 A. Yes, ma'am. I was raised by my maternal grandmother  
17 who along with my maternal grandfather was a sharecropper.  
18 She became a domestic worker, then she worked in the cafeteria  
19 of the elementary school where I attended until she broke her  
20 leg in a car accident and had to retire earlier. Assisting  
21 her were an aunt and uncle, my mother's sister, and her  
22 husband who were both HBCU graduates, educators. So  
23 college -- not going to college was not an option. There's  
24 something that was instilled in me, the importance of  
25 education. I am a proud Leandro kid. I was a -- given away

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1 my age. I was a sophomore in high school, in Halifax County  
2 Schools when Leandro was filed. Halifax County Schools is an  
3 original Leandro plaintiff. Leandro was filed in Halifax  
4 County Superior Court in 1994, so, you know, when you talk  
5 about the underfunding of a district as compared to other  
6 districts in the state, I know all about that.

7 Went off to college, came back home, attended the  
8 community college, then went to North Carolina Wesleyan in  
9 Rocky Mount and got my Bachelor's degree, got married, had a  
10 child.

11 Growing up, when I go back to my adolescence, I think  
12 about just this tension, you know, you were taught about it as  
13 a child. I lived in the rural outskirts of the city of  
14 Roanoke Rapids so we were told when we went into the city to  
15 be careful because we were Black.

16 We were told about how the cops might interact with us  
17 differently, how people in authority, a security guard at the  
18 local mall, might act differently toward us, a manager in a  
19 store.

20 When I was in college initially when I went to North  
21 Carolina A & T, when we came home on the weekends, you'd have  
22 four -- four of us riding around in the vehicle, we always got  
23 pulled over, always. Probably until my thirties, my thirties  
24 when I drove through town when I passed by a police officer I  
25 would always look in the rearview mirror, you know, because

## R. Pierce - Direct Examination

1 driving while Black I just -- you know, you just have that  
2 anxiety about it because that's what you were taught and then  
3 you experienced it yourself.

4 In terms of school, there's three school systems in  
5 Halifax County: Halifax County Schools, Weldon City Schools,  
6 Roanoke Rapids Graded Schools. Halifax and Weldon  
7 predominantly Black or African American, Roanoke Rapids  
8 predominantly White or Caucasian.

9 We just knew and we could see through the facilities that  
10 Roanoke Rapids had, the economic support they had that we did  
11 not measure up in terms of financial support in terms of  
12 funding.

13 When we would go over to Roanoke Rapids for a  
14 competition, whether that was sports or academic, we could see  
15 the disparities; we could see the inequity.

16 There were children that I went to school with at William  
17 R. Davie Middle School who lived in the city limits of Roanoke  
18 Rapids but could not attend Roanoke Rapids Graded Schools  
19 simply because of the way the district lines were drawn.  
20 Those lines were drawn I think in the '50s or the '30s and  
21 then they were redrawn in the 1970 to keep out Black  
22 neighborhoods so that Black children who lived in those  
23 surrounding neighborhoods could not attend Roanoke Rapids  
24 Graded Schools.

25 There's a historically Black community in Roanoke Rapids



## R. Pierce - Direct Examination

1 called Hodgestown, and there's a recreation center in  
2 Hodgestown called Chaloner Recreation Center. Literally less  
3 than a quarter a mile down the street is a Chaloner Middle  
4 School which is in Roanoke Rapids Graded School District and  
5 those kids cannot walk down the street to go to Chaloner  
6 Middle School, but they have a recreation center that has the  
7 same name in their community. In the pool area of Chaloner  
8 Recreation Center there's a fence. Literally on the other  
9 side of that fence is the football field for Chaloner Middle  
10 School.

11 So those are my friends, people I grew up with and they  
12 had to be bussed all the way up Highway 158 to attend William  
13 R. Davie. So when I say racial inequities and the things that  
14 you learn about and that you experience, that's my lived  
15 experience in Halifax County.

16 Q. After you graduated high school in Halifax County, what  
17 did you do work-wise?

18 A. When I graduated high school?

19 Q. After high school graduation, tell us a little bit about  
20 your work experience.

21 A. Well, I worked in retail coming out of high school, went  
22 to college, came back home. I worked in the local media. I  
23 was a sports editor of the Roanoke Rapids Daily Herald for  
24 about five years.

25 After I graduated from college, I went into municipal

## R. Pierce - Direct Examination

1 government work. I worked for the City of Roanoke Rapids. I  
2 worked in the Administration Department, Planning and  
3 Development Department, and then I was made the Museum  
4 Director of the Roanoke Canal Museum and Trail, then went into  
5 hospitality work and then went into teaching in November of  
6 2015, and that's what I've been doing ever since.

7 Q. Where were you a teacher?

8 A. Halifax County Schools initially, taught there for about  
9 four years, taught in Nash County for about three to three and  
10 a half, and this past school year I taught in Northampton  
11 County Schools.

12 Q. And what subject and grades did you teach?

13 A. Middle school social studies, sixth, seventh, and eighth  
14 grade.

15 Q. Mr. Pierce, what are your interests outside of teaching?

16 A. What I love to do is do the research of the Black history  
17 of northeastern North Carolina. One of the things that I'm  
18 pretty good at is applying for state historical markers that  
19 commemorate that history. I've had nine. I just was awarded  
20 my ninth last week. I've had nine since 2018; and out of  
21 those nine, eight of them were for African American people or  
22 events. I've actually got one in Southside Virginia too, so  
23 I've done 10 altogether.

24 Q. Have you won any awards for your teaching?

25 A. Yes, ma'am. In 2018 I was named the Halifax County

## R. Pierce - Direct Examination

1 Schools Most Outstanding Beginning Teacher.

2 2019, North Carolina Council for the Social Studies  
3 Teacher of the Year, which means I was recognized basically as  
4 the top social studies teacher in the state regardless of  
5 grade level.

6 And in 20 -- in 2022, the Marathon Teaching Institute in  
7 North Carolina Central University named me one of his African  
8 American male teachers of the year.

9 Q. And have you done any other statewide work related to  
10 social studies and teaching?

11 A. Yes, ma'am. I did sit on Governor Cooper's Teacher  
12 Advisory Committee. I was appointed to that in 2021. Just  
13 finished my term this past year in 2024.

14 I also sat on the Carolina Public Humanities Advisory  
15 Board. I was the only African American and the only teacher  
16 on that board, and I also did some work for the Department of  
17 Public Instruction in drafting and writing new social studies  
18 standards for eighth grade social studies which is North  
19 Carolina and U.S. History, and I was the only Black male  
20 teacher in the entire state that worked on those standards  
21 regardless of grade level.

22 Q. Mr. Pierce, you talked about the three school districts  
23 that are within Halifax County.

24 A. Yes, ma'am.

25 Q. Have those districts ever merged or has there been talk

## R. Pierce - Direct Examination

1 of merging those school districts?

2 A. I think there's been talk since the -- whenever  
3 Representative Henry Frye got elected, I can't remember the  
4 year that Representative Frye got elected. That was the first  
5 time that I remember reading that there's been talk of merger.  
6 There's been talk of merger in the past, but it always dies  
7 pretty quickly.

8 Q. Why do you think it dies pretty quickly?

9 A. Well, to be blunt about it, I don't believe that the  
10 parents of the students in Roanoke Rapids Graded Schools want  
11 their children going to school with the students in Halifax  
12 County Schools or Weldon City Schools for that matter.

13 Q. Does merger talk become a campaign issue in campaigns  
14 that you've seen in Halifax County?

15 A. Yes, ma'am. It definitely can. Definitely can.

16 I had an uncle who was a county commissioner, was  
17 actually the chairman of the County Commission, had won two  
18 terms. And going into -- actually had won three terms and  
19 going into his fourth term, well, trying to get re-elected to  
20 a fourth term. The opposition labeled him as a merger  
21 candidate because he felt that that was the best thing to do  
22 for all of the citizens and all of the students in Halifax  
23 County Schools and he lost.

24 Q. Did your work as a teacher have any impact on your  
25 decision to get involved in this case?

## R. Pierce - Direct Examination

1 A. Yes, ma'am. I, with Congressman Butterfield, referenced  
2 the Johnson versus Halifax County case. That case, Alston  
3 versus Butts in 1955 in the town of Enfield when White  
4 registrars were using delay tactics to register Black voters  
5 so a lot of Black voters couldn't vote.

6 You go back to Walker versus Moss when James Walker, Jr.,  
7 who was a civil rights attorney out of Hertford County sued  
8 the White Director of the Board of Elections in Halifax  
9 because he was challenging single-shot voting. All of those  
10 cases involving voting rights, involving Black labor  
11 discrimination, involving political representation, I did  
12 research on those myself. I taught about them in my  
13 classroom. I taught about men like Congressman Butterfield,  
14 Senator Blue, because I just thought when you teach local  
15 history to children it can capture their attention more so  
16 than teaching them things that happened hundreds of thousands  
17 of miles away.

18 Q. You were just recently elected to the North Carolina  
19 House of Representatives; is that right?

20 A. That's correct.

21 Q. What District?

22 A. Twenty-seventh District.

23 Q. What counties make up that district?

24 A. Halifax, Northampton, and Warren.

25 Q. Are those counties majority Black?

## R. Pierce - Direct Examination

1 A. Yes, ma'am. According to the 2020 Census and the recent  
2 American Community Survey.

3 Q. What made you decide to run for office?

4 A. I felt that the current representation that we had in the  
5 House of Representatives was not authentically representing  
6 the interest of the constituents in that district.

7 Q. In what ways?

8 A. Voting record. This representative was voting against  
9 the interest of the constituents in that district.

10 For example, when you talk about education, you know,  
11 that's Leandro territory, and the representative we had voted  
12 for the expansion of the voucher program. I don't really want  
13 to get into the history of that, but vouchers didn't become an  
14 issue in American history until 1955, which is the second  
15 Brown decision. The first Brown decision, desegregation of  
16 public schools; the second Brown decision moved forward with  
17 all deliberate speed. So that's when you see the issue of  
18 vouchers coming up where you're going to take public money to  
19 pay for private school.

20 That's not necessarily the criteria today with vouchers  
21 in terms of it being primarily used by White citizens to do  
22 that. You do have a few Black citizens, but that number has  
23 dwindled since the voucher program was re-introduced in 2013.

24 But expanding the voucher program is going to defund the  
25 public school system in that area. And there have been

## R. Pierce - Direct Examination

1 studies done by the Office of State Budget and Management to  
2 show the percentages of funding that they're going to lose.

3 Also voting to take away the power of residents to sue  
4 businesses; namely hog farms, for public nuisance lawsuits.  
5 You know, you literally can't go out into your backyard  
6 without, you know, smelling that, you know, making your  
7 environment toxic. I don't think that you can represent  
8 Warren County, which is the birthplace of the Environmental  
9 Justice Movement, and vote for a bill that makes it easier to  
10 pollute or make the environment more toxic.

11 Also voting for tax cuts that are going to take away  
12 funding that could go towards public education, early  
13 childhood education; voting for bills that make it easier to  
14 raise your homeowners insurance, things like that, because  
15 you're going to delay updating the state's building code to  
16 2031. So homes are going to be less energy efficient. You  
17 know, housing, education, environment, those are all issues  
18 that are very relevant to us in House District 27.

19 Q. And why are they relevant to you in House District 27?  
20 What is it about those counties that make those issues  
21 relevant?

22 A. Because of the history, because of the history I  
23 mentioned. Warren County being the birthplace of the  
24 Environmental Justice Movement. There were people who got  
25 arrested. There were children who laid in the road to stop

## R. Pierce - Direct Examination

1 those trucks from bringing that sludge into Warren County.

2 When you talk about education, Leandro, the inequities of  
3 the three school systems all in one county.

4 When you talk about the environment, again, Northampton  
5 County. You have hog farms, you have InVivo who's there now.  
6 Residents complain to me all the time, you know, "What are you  
7 going to do about this?" Because it's making the environment  
8 toxic; people are getting sick, things of that nature.

9 Medicaid expansion took forever. Over 50 percent of the  
10 children in each of those counties, Halifax, Northampton, and  
11 Warren are on Medicaid as well as a high percentage of  
12 seniors, maybe the highest in the state.

13 Q. And who was the incumbent for House District 27?

14 A. Mr. Michael Wray.

15 Q. Was he a Democrat or Republican?

16 A. He was a Democrat.

17 Q. Mr. Pierce, does defunding public schools have an impact  
18 on Black kids in those three counties?

19 A. Yes, ma'am. I taught in one and my three children attend  
20 the other one.

21 Q. What about the other issues that you mentioned; Medicaid  
22 expansion, environmental issues, did those impact Black  
23 citizens?

24 A. Yes, ma'am. Definitely. Definitely.

25 Q. Why do you say that?



## R. Pierce - Direct Examination

1 A. Well, in terms of Medicaid expansion, like I was saying  
2 earlier over 50 percent of the children in those three  
3 children are on Medicaid. You're talking about healthcare. A  
4 child can't learn, they can't prosper, they can't grow if  
5 they're unhealthy. In terms of seniors, that's the same  
6 thing.

7 In terms of the environment, again, if you walk out into  
8 your backyard and you are literally breathing in toxins from a  
9 neighboring plant, then you can't live; you can't live, you  
10 can't prosper, you're going to be unhealthy. So I think the  
11 environmental issue goes right in line with the Medicaid  
12 expansion issue.

13 Q. And does it disproportionately impact Black citizens?

14 A. Yes, ma'am. The history has shown that those farms are  
15 built in or near neighborhoods that are usually minority  
16 neighborhoods.

17 Q. Mr. Pierce, have you always been a Democrat?

18 A. No, ma'am.

19 Q. What else have you been registered as?

20 A. Unaffiliated.

21 Q. Why did you register unaffiliated?

22 A. At the time I didn't think that the Democratic Party was  
23 responsive to the issues of Black voters.

24 Q. Can you explain that a little bit?

25 A. Well, it seemed that a lot of lip service was paid to

## R. Pierce - Direct Examination

1 them, you know, the issues that were relevant to us but there  
2 wasn't enough policy being introduced or passed when we  
3 were -- excuse me, by the party, when the party had the  
4 opportunity to do it.

5 One of the things I would say is that there's a bill  
6 that's been introduced into Congress since the '80s called  
7 HR40 which is a bill to study and develop proposals for  
8 reparations for the descendants of enslaved Black people.  
9 That's an issue throughout the country, not just in North  
10 Carolina, but Halifax County had the highest enslaved  
11 population at the beginning of -- when the first census was  
12 taken in 1790. Those Black-Belt counties had some of the  
13 highest percentages of enslaved people in the state of North  
14 Carolina during antebellum. That's nothing that Democrats  
15 actually pushed through when they had the power to push it  
16 through in the House.

17 Q. Have Black voters always favored the Democratic Party?

18 A. No, ma'am, not at all, similar to what Congressman  
19 Butterfield testified to. In the -- after the 15th Amendment  
20 was passed that gave Black men the right to vote, mostly Black  
21 men supported and were registered Republicans or, you know,  
22 radical Republicans, they supported candidates like Charles  
23 Sumner, the Senator, Thaddeus Stevens, the Congressman.  
24 Republicans were the party of Lincoln, and Lincoln was looked  
25 at as the -- President Lincoln was looked at as the Great

## R. Pierce - Direct Examination

1 Emancipator. Emancipation Proclamation giving Black men the  
2 opportunity to fight for their freedom in the Union Army, as  
3 well as vote following the Civil War.

4 You saw the change with the advent of the New Deal, and  
5 then I think it was probably sealed with the election of  
6 President Kennedy in 1960 who introduced -- I believe he  
7 issued the Executive Order for Affirmative Action, and then  
8 with the election of Lyndon Johnson you see the passage of the  
9 Civil Rights Act of '64, Voting Rights Act of '65, and the  
10 Fair Housing Act of '68.

11 Q. Have you personally seen instances where Democrats are  
12 not equally supportive of issues that matter to Black voters?

13 A. Personally?

14 Q. Yes.

15 A. Well, through voting records, yes. And that would go  
16 back to some -- the opponent that I had in this past election  
17 as well as the voting records of some other legislators  
18 whether on the state or federal level.

19 Q. Why did you decide to become a plaintiff in this case?

20 A. Well, I was aware of the history that I mentioned  
21 earlier, those voting rights cases going back to the '50s. I  
22 know one of the ways that you can improve your lot  
23 economically is through policy, so giving Black voters the  
24 opportunity to elect their preferred candidate I think is a  
25 vehicle to be able to do that to economically develop your

## R. Pierce - Direct Examination

1 community. But going back to those court cases, that history  
2 that I taught about in the classroom, that really, really  
3 compelled me to become a part of it as well as thinking about  
4 the children that I teach and my own three.

5 Q. Mr. Pierce, in your opinion has the legislature been  
6 responsive to the needs of the Black community in northeastern  
7 North Carolina?

8 A. We talking currently or historically?

9 Q. In recent years.

10 A. Recent years, no, no. As I was saying earlier and as the  
11 Congressman was saying earlier, the delayed expansion of  
12 Medicaid as well as the expansion of the voucher program,  
13 we're talking billions of dollars where there is no public  
14 transparency or accountability for how that money is spent,  
15 whereas any other institution that receives public money,  
16 particular educational institutions do have to give some  
17 public accounting or transparency on how that money is spent.

18 Q. Do you have any other examples than what you've mentioned  
19 today of how you've seen that the legislature has not been  
20 responsive to the needs of Black citizens?

21 A. Education, the environment, the Medicaid expansion,  
22 voting. Voting. When you pass a bill and a federal court  
23 says that that bill, which is a voting rights bill or voter ID  
24 bill, targeted Black voters with surgical precision -- on  
25 African American voters with surgical precision that really

## R. Pierce - Cross-Examination

1 makes you raise your eyebrows as an African American voter,  
2 particularly one in a county with a history of the suppression  
3 of voting rights as Halifax is. We were one of those  
4 preclearance counties under Section 5 of the VRA.

5 Q. Do you think it's possible to separate race and politics  
6 in northeastern North Carolina?

7 A. It is possible, but in some instances it might not be.  
8 But it is possible to do it.

9 Q. Why do you think that Black voters tend to vote  
10 democratic today? Is it party allegiance or is it something  
11 else?

12 A. No, no. One of the people who was on the county  
13 commission in Halifax is a Black Republican. So it's not  
14 party allegiance; it's that the Democratic Party how, like,  
15 speaks more to and presses for policy that addresses issues  
16 that are relevant to African American or Black voters.

17 Q. Thank you, Mr. Pierce. I don't have any other questions.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION

20 BY MS. HOLT:

21 Q. Good morning, Representative Pierce. It's nice to see  
22 you again.

23 A. Yes, ma'am. Good morning to you too.

24 Q. Thank you. As a reminder, my name is Cassie Holt, and I  
25 represent the Legislative Defendants in this case.

## R. Pierce - Cross-Examination

1       You mentioned Michael Wray earlier on direct.

2   A.    Yes, ma'am.

3   Q.    And he had a part in your deciding to run for office; is  
4   that correct?

5   A.    Yes, ma'am.

6   Q.    Because he voted with Republicans too many times,  
7   correct?

8   A.    Yes, ma'am, when it came to certain policy.

9   Q.    In fact, in your opinion, House District 27 was being  
10   represented by someone who voted with Republicans more than  
11   members of the Republican Party; is that correct?

12   A.    In the 2021-'22 session, yes.

13   Q.    And you made the decision to seek elected office after  
14   filing this lawsuit, correct?

15   A.    Made the decision after?

16   Q.    Yes, sir.

17   A.    Yes, ma'am. It was in December.

18   Q.    And on direct you mentioned several cases involving  
19   Halifax County; is that right?

20   A.    Yes, ma'am.

21   Q.    One of those cases was Johnson v. Halifax?

22   A.    Yes, ma'am.

23   Q.    And you'd agree with me that that case came down in 1984;  
24   is that correct?

25   A.    I believe so. I know it was in the '80s, early '80s.

## R. Pierce - Cross-Examination

1 Q. Well, we can agree that the case speaks for itself.

2 A. Uhm-uhm. I guess so.

3 Q. Okay. And the other cases you mentioned, Alston and  
4 Walker, those were before 1984 as well, correct?

5 A. Yes, ma'am. That's correct.

6 Q. You also mentioned that you were a sophomore when Leandro  
7 was filed in 1994; is that right?

8 A. Giving away my age, but yes.

9 Q. Well, so you went to elementary and middle school in the  
10 1980s and early '90s?

11 A. Yes, ma'am.

12 Q. I won't do the exact date for you if that helps.

13 A. Okay. Thank you.

14 Q. And you acknowledged that the General Assembly did pass  
15 Medicaid expansion?

16 A. In the last session prior to this one I believe they did,  
17 yes, ma'am.

18 Q. Okay. And are you aware that there's been a moratorium  
19 on hog farms in this state for over a decade?

20 A. I was not aware of it, no.

21 Q. And Warren, Halifax, and Northampton Counties are within  
22 the State Senate districts challenged here, correct?

23 A. Halifax and Warren, yes; not Northampton. I believe you  
24 said Northampton too. Just Halifax and Warren.

25 Q. All right. Well, you would agree with me that you as the

## R. Pierce - Cross-Examination

1 elected representative of House District 27 adequately  
2 represent the needs and interests of the people in your  
3 district?

4 A. Yes, ma'am, I feel I do.

5 Q. And we've also mentioned Congressional District 1  
6 earlier, correct?

7 A. Yes, ma'am.

8 Q. Which is represented by Don Davis; is that right?

9 A. Yes, ma'am.

10 Q. And Representative Davis is African American?

11 A. Yes, ma'am.

12 Q. And he is a Democrat?

13 A. Yes, ma'am.

14 Q. So of the three largest representative districts that you  
15 reside in, Congress, State House, and State Senate, you are  
16 only challenging the district in which a Republican represents  
17 you; is that correct?

18 A. Well, I wasn't party to any other lawsuits for the First  
19 Congressional District or my House district.

20 Q. And isn't it true that you did not have an opponent in  
21 the November 2024 General Election?

22 A. Yes, ma'am, I was unopposed.

23 Q. But you did have an opponent in the 2024 Democratic  
24 Primary; is that right?

25 A. That's correct.



## M. Matthews - Direct Examination

1 Q. And I believe we mentioned earlier that was Michael Wray?

2 A. Yes, ma'am.

3 Q. And Mr. Wray is a White Democrat; is that correct?

4 A. That's correct, yes, ma'am.

5 MS. HOLT: No further questions, Mr. Pierce. Thank  
6 you. Representative, excuse me.

7 THE COURT: Anything from the State?

8 MR. STEED: No, Your Honor. Thank you.

9 THE COURT: Anything else from the Plaintiffs?

10 MS. MACKIE: No redirect. Thank you.

11 THE COURT: Please watch your step. There's a step  
12 up as you come off the witness stand and a step down through  
13 the gate.

14 The Plaintiffs may call their next witness.

15 MR. SPEAS: Your Honor, the Plaintiffs will call  
16 Moses Matthews to the stand.

17 MOSES MATTHEWS,  
18 having been duly sworn, testified as follows:

19 THE COURT: Good morning, sir.

20 THE WITNESS: Good morning.

21 THE COURT: You may examine the witness.

22 DIRECT EXAMINATION

23 BY MR. SPEAS:

24 Q. Good morning, Mr. Matthews. Where do you reside?

25 A. In Williamston, North Carolina.

## M. Matthews - Direct Examination

1 Q. How long have you resided in Williamston?

2 A. Tomorrow will be 51 years.

3 Q. You're a plaintiff in this case?

4 A. Yes, I am.

5 Q. Are you registered -- Williamston is in Martin County,  
6 correct?

7 A. That's correct.

8 Q. Are you registered to vote in Martin County?

9 A. Yes, I am.

10 Q. When did you first register?

11 A. 1976.

12 Q. Is that when you moved to Martin County?

13 A. I moved to Martin County in 1974.

14 Q. Have you voted regularly since 1976?

15 A. Yes, I have.

16 Q. Would you tell Judge Dever a little bit about your  
17 background and experiences?

18 A. Well, I grew up in the Low Country of South Carolina, in  
19 Berkeley County. I'm a graduate of Russellville High School  
20 in 1964. From there I moved to Baltimore, Maryland. And  
21 after working for a while to get my college money together, I  
22 went to Morgan State University. And from Morgan I worked at  
23 Glidden Paint in Research and Development, and then I moved to  
24 North Carolina in '74 and worked 29 years or so at  
25 Weyerhaeuser Paper Company.

## M. Matthews - Direct Examination

1 Q. And did you have -- was your undergraduate degree in  
2 chemistry and science?

3 A. That's correct.

4 Q. And did you utilize those degrees at Glidden and  
5 Weyerhaeuser?

6 A. I did.

7 Q. Are you now retired from Weyerhaeuser?

8 A. Yes. I retired from Weyerhaeuser in 2003.

9 Q. Okay. And what are you doing now?

10 A. I'm working with a group of landowners, Black landowners  
11 in particular trying to prevent additional land losses in  
12 families and concentrating on trying to get these landowners  
13 involved in the cannabis industry and fiber hemp, growing hemp  
14 for fiber.

15 Q. Have you been elected to public office in North Carolina,  
16 Mr. Matthews?

17 A. Yes, yes, I have. In 1996 I got elected to the school  
18 board in Martin County and I got elected for five terms,  
19 served there for 20 years until 2016.

20 Q. So you served on the school board from 20 -- 1996 to  
21 2016?

22 A. That's correct.

23 Q. Were you elected from a district or were you elected at  
24 large?

25 A. From a district.

## M. Matthews - Direct Examination

1 Q. Do you know how the school board districts and Martin  
2 County were created?

3 A. There was a lawsuit, federal lawsuit, I believe it was in  
4 the '80s. We were at large and from that point the federal  
5 government ruled in favor -- the court system ruled in favor  
6 of the district system. So we have seven districts in the  
7 county, school districts in the county.

8 Q. What district were you elected from?

9 A. District 5.

10 Q. Where is that located?

11 A. That's in Williamston proper for the most part.

12 Q. Does Williamston proper have a large Black population?

13 A. Yes. Yes, it does.

14 Q. In your experience in Martin County, can a Black  
15 candidate win an election for a seat on the school board if  
16 the district does not have a large Black population?

17 A. Will you repeat that please?

18 Q. In your experience in Martin County, can a Black  
19 candidate win election to a seat on the school board if the  
20 candidate is not in a district that has a substantial Black  
21 population?

22 A. History doesn't show that is possible.

23 Q. I'm sorry?

24 A. History doesn't show that as possible.

25 Q. Do you recall the last election in -- for the Martin

## M. Matthews - Direct Examination

1 County School Board a Black candidate running in the  
2 Jamesville area?

3 A. Yes, I do, this past November.

4 Q. Did that person lose, the Black candidate lose?

5 A. The Black candidate did lose, yes.

6 Q. Defeated by a White candidate?

7 A. That's correct.

8 Q. Is the White population in that district large mostly,  
9 mostly White?

10 A. Predominantly White, yes.

11 Q. Mr. Matthews, are you a member of any civic organizations  
12 that evaluate the qualifications of candidates for elective  
13 offices?

14 A. Yes, I am. Currently, I serve on the Executive Board for  
15 Advance Carolina; and also, I'm Second Vice President for  
16 Eastern North Carolina Civic Group.

17 Q. What is the Eastern North Carolina Civic Group?

18 A. It's a nonpartisan group, consists of 23 counties, mostly  
19 on the east side of Interstate 95.

20 Q. And what does it do?

21 A. We stay in contact from a grassroots perspective with the  
22 communities, we try to get engaged, have a pulse on the  
23 concerns, the economic situation, the educational situation,  
24 employment. Everything that impacts the family, we try to  
25 stay abreast of what's happening in those communities.

## M. Matthews - Direct Examination

1 Q. Does this group evaluate candidates for public office on  
2 some sort of score card?

3 A. Yeah. We do that constantly. Watch how they vote, have  
4 conversation on how they vote and rally those votes that have  
5 our best interests at heart.

6 Q. And what votes are you interested in, votes regarding  
7 education, economic matters, that sort of thing?

8 A. That's correct, yes.

9 Q. Has the legislature been responsive to the needs of  
10 children and their parents in education in eastern North  
11 Carolina?

12 A. We don't think so.

13 Q. Why is that?

14 A. Well, it's been spoken to early on -- the Leandro case,  
15 for instance, has been a major concern ever since the mid  
16 '90s, ever since I've been on the Board. That issue has  
17 surfaced -- haven't gotten any real traction there.

18 We looked at -- at the dollars that's been diverted to  
19 other -- other education institutions. The charter school, we  
20 fought the charter school and wanted to keep the cap on the  
21 charter school at 100 for years, and we lost that battle. So  
22 every time you see limited dollars being spread to more  
23 variety, more -- other entities, it's taking away from public  
24 schools and has taken away and that's hurting Martin County  
25 particularly.

## M. Matthews - Direct Examination

1 Q. Is the Eastern Civic Group interested in the health needs  
2 of Black citizens in that community?

3 A. Absolutely. We've -- we look at environmental issues.  
4 We look at the health disparities that's been part of eastern  
5 North Carolina. We look at our access to health. Just in  
6 Martin County, for instance, we lost our only hospital well  
7 over a year. So it's been a -- what's been happening has been  
8 a detriment to good health in Martin County.

9 Q. And do you know why the hospital was not able to succeed  
10 and had to close down?

11 A. Well, it was somewhat of a death spiral for a while. A  
12 lot of the families would take their -- take their services to  
13 Greenville where there was at least more stable healthcare,  
14 but then the Medicaid expansion impacted us. Someone spoke of  
15 it earlier, well over a decade I know Governor Cooper fought  
16 to try to get Medicaid expansion, just seemed to become a  
17 reality in January of 2023, but while we were waiting for  
18 Medicaid expansion, if we'd gotten that we believe that Martin  
19 General Hospital would have stayed open.

20 Q. Okay. Let me turn to another subject, Mr. Matthews. And  
21 let's put up Joint Exhibit 1.

22 Mr. Matthews, we put in front of you a copy of Joint  
23 Exhibit 1. This is a copy of a map of the present Senate  
24 districts. You reside in District 2, is that correct, in  
25 Martin County?

## M. Matthews - Direct Examination

1 A. That's correct.

2 Q. Was there a Black candidate for election in Senate  
3 District 2 in 2024? Was that Tare Davis?

4 A. Yes, yes, yes.

5 Q. Was he a strong candidate?

6 A. Yes, he was.

7 Q. Did he lose?

8 A. He lost.

9 Q. Do you know about how much percentage of the vote he got?

10 A. I do not.

11 Q. Based on your experiences yourself in elections, can a  
12 Black candidate win an election in Senate District 2 in this  
13 Senate map?

14 A. I think it's a weak chance of you winning with the  
15 current map.

16 Q. I'm sorry?

17 A. I think it's not likely.

18 Q. Martin is now in a Senate district with Hyde, Pamlico,  
19 and Carteret Counties; is that correct?

20 A. That's correct.

21 Q. Has Martin ever been in a district, Senate district with  
22 those counties, to your knowledge?

23 A. I don't -- I don't remember Carteret. The map has  
24 changed in the last -- the last six or eight years at least  
25 the map has changed multiple times, so I don't remember



## M. Matthews - Direct Examination

1 Carteret.

2 Q. Do the folks in Martin County have much in common with  
3 the folks down on the coast in Carteret and Pamlico and Hyde?

4 A. Not to my -- I don't think so.

5 Q. Okay. So Mr. Matthews, do you believe that the General  
6 Assembly has been responsive to the needs of Black citizens in  
7 northeastern North Carolina in a range of areas?

8 A. No, I don't think they have, just on the education side  
9 of it. Certainly from the Medicaid expansion and that delay,  
10 they demonstrated to have not. Any kind of relaxation on  
11 environmental control; water, air, soil, it's a detriment.  
12 They have tremendous health disparities in eastern North  
13 Carolina.

14 Q. Mr. Matthews, why did you decide to become a plaintiff in  
15 this case?

16 A. I wanted to be a -- at least a voice to the legislative  
17 body. I wanted -- I wanted to -- and want the legislative  
18 body to be composed of voices that would represent the best  
19 interest of eastern North Carolina and all citizens of eastern  
20 North Carolina.

21 I feel that in the -- in the last decade or so we've  
22 had -- we've had folks in the legislative body that understood  
23 our core values and responded to our core values.

24 Q. And do Black citizens in Martin County in your experience  
25 vote out of allegiance to the Democratic Party or out of

## M. Matthews - Cross-Examination

1 identity of interest in values, core values?

2 A. I think it's core values. We've had -- we've had some  
3 Democratic Party representatives that voted in ways that we  
4 didn't agree on and we let them know so.

5 MR. SPEAS: No other questions at this point, Your  
6 Honor.

7 THE COURT: Thank you. Cross-examination.

8 CROSS-EXAMINATION

9 BY MS. HOLT:

10 Q. Good morning, Mr. Matthews. As a reminder, my name is  
11 Cassie Holt and I represent the Legislative Defendants in this  
12 case.

13 You mentioned that you served on the Martin County School  
14 Board, correct?

15 A. That's correct.

16 Q. And you ran for the Martin County School Board as a  
17 Democrat; is that right?

18 A. I don't even know if we were partisan, but I've been a  
19 Democrat -- registered Democrat so I guess it's yes.

20 Q. So you'd agree with me that if there were partisan  
21 elections, you would have run as a Democrat, correct?

22 A. Yes, yes.

23 Q. And you were elected from a single-member district,  
24 right?

25 A. What do you mean a single-member district?

## M. Matthews - Cross-Examination

1 Q. I believe you testified on direct that a -- that you were  
2 elected from a specific district, not an at-large election?

3 A. That's right. District 5, absolutely.

4 Q. So would you agree with me that you were elected to the  
5 Martin County School Board as a Democrat five times?

6 A. Yes.

7 Q. Mr. Matthews, do you know who your current state senator  
8 is?

9 A. Yes.

10 Q. Who's that?

11 A. Sanderson.

12 Q. And you've never personally contacted any legislator  
13 about redistricting, correct?

14 A. Have not.

15 MS. HOLT: No further questions. Thank you, Mr.  
16 Matthews.

17 THE COURT: Anything else, Mr. Speas?

18 MR. SPEAS: No, Your Honor.

19 THE COURT: State Board, you'll have to speak up.

20 MR. STEED: No questions.

21 THE COURT: Sir, watch your step. There's also a  
22 step down through that gate.

23 The Plaintiffs may call their next witness.

24 MR. SPEAS: Your Honor, the Plaintiffs will call  
25 Senator Blue to the stand.

## D. Blue - Direct Examination

1 DANIEL BLUE, JR.,

2 having been duly sworn, testified as follows:

3 THE COURT: Hello, Senator. You may examine the  
4 witness.

5 DIRECT EXAMINATION

6 BY MR. SPEAS:

7 Q. Where do you reside, Senator Blue?

8 A. I live in Raleigh.

9 Q. Would you review for the Court your educational  
10 background?

11 A. I attended public schools in Robeson County, North  
12 Carolina. I went to North Carolina Central University. Got a  
13 BS degree in mathematics, and I left there immediately and  
14 went to Duke Law School, and I graduated from the Duke Law  
15 School in 1973.

16 Q. Have you been practicing law since then?

17 A. Since 1973, August, I believe, I have continuously  
18 practiced law here in Raleigh pretty much on Fayetteville  
19 Street. I joined a firm with Terry Sanford, Cannon, Adams &  
20 McCullough Law Firm. And my entire career has been spent  
21 within a block of Fayetteville Street. I practiced with that  
22 firm for a while and then left and we started on and I'm  
23 working with the successor of that firm now.

24 Q. You had some experience in the North Carolina  
25 Legislature, I believe?

## D. Blue - Direct Examination

1 A. A little bit.

2 Q. Would you review that experience with the judge please?

3 A. I was elected to the North Carolina House of  
4 Representatives in 1980 and I served in the House until  
5 2000 -- the end of 2002. I served as Speaker of the House for  
6 two terms in the 1990s. I came back to the House in 2006 when  
7 my successor died, and I served in the House again until 2009.  
8 And I've served in the Senate since 2009. Served from 2013  
9 until the end of last year as the Democratic leader in the  
10 Senate.

11 Q. Okay. And I believe you were Speaker of the House,  
12 correct?

13 A. Yes. Two terms I served as Speaker of the House.

14 Q. And you were also minority leader in the Senate, I  
15 believe?

16 A. That's correct.

17 Q. Have you been involved in redistricting over the years?

18 A. I have. I got involved in redistricting when I first got  
19 elected because it was a redistricting year. So in 1981 I  
20 ended up on the redistricting committee. I had an interest in  
21 it. I'd basically spent time studying it in law school,  
22 writing on it, doing my moot court problems on it. So I've  
23 served in every district -- every term in which we've  
24 redistricted except the period 2003 right when Stephenson was  
25 going into effect. I think I participated in helping to

## D. Blue - Direct Examination

1 draw -- being involved in the drawing opposition to 13 Senate  
2 districts and 12 House districts -- redistricting sessions  
3 rather.

4 Q. Did you participate in redistricting following the  
5 decision of the federal court in Gingles?

6 A. I did.

7 Q. Back in 1984?

8 A. I did.

9 Q. And did you participate in redistricting in the 1990s in  
10 the Shaw versus Reno decade-long redistricting fight?

11 A. I did participate. In fact, I appointed the committees  
12 in the House that considered redistricting up through '95.

13 Q. And you were involved in drawing the maps in 2000 that  
14 were challenged in the Stephenson case?

15 A. The ones in 2001 when they were drawn in the Stephenson  
16 case, but again, I left the legislature at the end of 2002 so  
17 when it went into effect in 2003, I'd gone from the  
18 legislature but involved in the initial drawings.

19 Q. And were you involved in redrawing the Congressional  
20 districts after the Cooper versus Harris decision?

21 A. Yes.

22 Q. And in redrawing Legislative districts after the  
23 Covington decision?

24 A. Yes.

25 Q. Okay. Senator, what is your understanding of the

## D. Blue - Direct Examination

1 obligation of the General Assembly with regards to Section 2  
2 of the Voting Rights Act?

3 A. Well, the first priority is to be -- to create the  
4 districts that are required by Section 2 that comply with  
5 Section 2; and after you do that, after you put those  
6 districts in place, the duty then is to comply with the Whole  
7 County Provision of the North Carolina Constitution which came  
8 into play in the Stephenson decision. That's been one of the  
9 requirements since Stephenson.

10 And the rule of thumb when you're redistricting is, at  
11 least in my mind, is that you have to be careful of packing to  
12 avoid liability under -- in racial redistricting cases, in  
13 racial gerrymanders, and you have to be concerned about  
14 cracking when you're faced with Section 2 challenges. So if  
15 you avoid those two pitfalls, you'll be pretty successful in  
16 it.

17 Q. Are you generally familiar with the Gingles factors that  
18 are evaluated in determining whether or not Gingles applies  
19 Section -- Section 2 applies?

20 A. I am.

21 Q. Do you believe there are places in North Carolina today  
22 where the Gingles conditions are still present?

23 A. I do. I think that they're still -- well, I think the  
24 Gingles provisions specifically are present in northeastern  
25 North Carolina in a much more inclusive way than they are in

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1 other parts of the state. But yes, I think that clearly in  
2 eastern North Carolina Gingles still applies.

3 Q. And what's the basis for that view? What did you  
4 consider in coming to that view?

5 A. Well, over the last 40-plus years, I've looked at a lot  
6 of racial data. I've drawn a lot of maps and I've scrutinized  
7 a lot of voting records and returns in election; and after  
8 doing that, I pretty much concluded that they still are very  
9 prevalent, especially in northeastern North Carolina.

10 Q. Have you shared your view that the Gingles conditions are  
11 present in northeastern North Carolina with your colleagues in  
12 the legislature?

13 A. I have. And did it particularly during the last decade  
14 and specifically in the districts that are at issue in this  
15 case.

16 Q. If we could pull up Fact Stipulation Number 33, please.

17 Senator, Fact Stipulation Number 33 is on the screen in  
18 front of you. And that lists eight contiguous counties in  
19 northeastern North Carolina which have large African American  
20 populations. These counties are Bertie, Edgecombe, Halifax,  
21 Hertford, Northampton, Vance, Warren, and Washington.

22 Are these counties in the area which you believe the  
23 Gingles present -- factors are currently present?

24 A. These counties, this is traditionally known as the  
25 Black-Belt area of North Carolina. Most of these counties are



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1 along the Virginia border, but these are the eight counties  
2 typically you think of and the way I've been referring to them  
3 since I was in college.

4 Q. Calling on your historical memory of maps drawn by the  
5 legislature, since the Stephenson decision, have there been  
6 occasions when a map was drawn that met both the Stephenson  
7 requirements and the VRA on its face?

8 A. There have been. I think that the maps that elections  
9 were held in 2018 and 2020 comply to -- both with Section 2  
10 and Stephenson with the Whole County Provision.

11 Q. Could we pull up Joint Exhibit 70. Senator Blue, is  
12 Joint Exhibit 70 in front of you the map used for the 2018  
13 elections enacted by the North Carolina General Assembly?

14 A. It is a map that was finally settled upon after extensive  
15 litigation after the 2011 redistricting. This is an accurate  
16 depiction of the districts under which we ran in 2018.

17 Q. And could we pull up please Joint Exhibit 71 -- I'm  
18 sorry. 70 -- make that 71.

19 Senator Blue, is Exhibit 71 the map enacted by the  
20 General Assembly and used for Senate elections at 2000 and  
21 2020?

22 A. It is.

23 Q. And in northeastern North Carolina are the 2018 and 2020  
24 maps identical?

25 A. They are identical.

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1 Q. Okay. I call your attention to Senate Districts 3 and 4,  
2 and let's just use Joint Exhibit 71. Are those two districts  
3 composed entirely of whole counties?

4 A. Districts 3 and 4 are, in fact, whole counties.

5 Q. In that sense, are they compliant with Stephenson?

6 A. Totally compliant with Stephenson.

7 Q. Would you look at Senate District 3 and tell me whether  
8 or not Senate District 3 is composed of five Black-Belt  
9 counties plus Beaufort County?

10 A. It is. Martin, Bertie, Northampton, Warren, and Vance.

11 Q. And is Senate District 4 composed of two Black-Belt  
12 district county -- Black-Belt counties, Halifax and Edgecombe  
13 plus Wilson.

14 A. It is. The two largest Black-Belt counties, Halifax and  
15 Edgecombe, are in that district.

16 Q. And do you recall whether Senator Bazemore was elected  
17 from Senate District 3 in both 2018 and in 2020?

18 A. She was.

19 Q. And do you recall whether -- is she African American?

20 A. She's African American.

21 Q. Do you recall whether Toby Fitch won election in both  
22 2018 and 2020 in Senate District 4?

23 A. Judge Fitch won in those two election years. He was from  
24 Wilson, and Edgecombe and Halifax Counties were in his  
25 district.

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1 Q. Is Senator Fitch Black?

2 A. He is.

3 Q. Did you or any other legislative -- Black legislator  
4 propose any amendments to either 2000 -- to either Senate  
5 District 3 or 4 at -- in either 2018 or 2020?

6 A. No, we did not.

7 Q. Looking at --

8 A. Not as it relates to these two districts, yes.

9 Q. Looking at Joint Exhibit 71, is that map, in fact,  
10 labeled, "Senate Consensus Nonpartisan Map."

11 A. Yes. And for all intents and purposes, Senator Hise,  
12 who's one of the chairs of the redistricting effort, called it  
13 that and I agreed with him; that it was a consensus map  
14 regarding these finally settled-on districts.

15 Q. The Senate districts had to be redrawn following the 2020  
16 election and the 2020 Census; is that correct?

17 A. That's correct.

18 Q. Let's now look at the map drawn in 2022 which is Joint  
19 Exhibit 2. If we could pull that up.

20 Did you support this map in northeastern North Carolina?

21 A. No.

22 Q. Did any Black legislator support this map in 2022, vote  
23 for it in 2022? The map?

24 A. No.

25 Q. Why not?

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1 A. Because it had other flaws in it. It was -- as I recall,  
2 it -- it still had aspects of gerrymandering in it. And,  
3 let's see, there was an issue in New Hanover County and I  
4 think there were issues in the western part of the state with  
5 it as primary reasons that it wasn't supported.

6 I'm looking at it. I did not oppose the configuration of  
7 District 3 in that map, but we didn't vote for the map.

8 Q. What happened at the 2022 election in Senate District 3  
9 under this map?

10 A. Let me correct myself. Let me go back. I know that  
11 there was a map 2022.

12 Q. This is the 2022 map.

13 A. This is the map that was used?

14 Q. Yes.

15 A. That's right. In District 3, Valerie Jordan was the  
16 candidate.

17 Q. Was she African American?

18 A. She's African American and she lost in that district.

19 Q. And under the 2022 map, did Toby Fitch run again?

20 A. Judge Fitch ran again in District 22; District 4, which  
21 was Wilson, Wayne, and Greene Counties then, his prior  
22 district was Wilson, Edgecombe, and Halifax.

23 Q. And did he lose?

24 A. He lost.

25 Q. Did you examine the results of those elections?

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1 A. I did.

2 Q. Do you believe that polarized voting contributed to the  
3 defeat of both Ms. Jordan and Judge Fitch?

4 A. I do.

5 Q. Racially polarized voting?

6 A. Yes. Racially polarized voting I think is what led to  
7 their defeats.

8 Q. Was this map, Exhibit 2, Joint Exhibit 2, used for the  
9 2024 election?

10 A. It was not.

11 Q. Let's pull up Joint Exhibit 1, please. Are you familiar  
12 with this map, Senator?

13 A. I am.

14 Q. Did this map divide the eight Black-Belt counties among  
15 four different districts?

16 A. It did. It had gone from three divided districts I think  
17 in 2022 and 2018 and 2020 elections. And this one divided  
18 these counties, these counties that we've been talking about  
19 into four Senatorial districts.

20 Q. Is it accurate that Northampton, Hertford, and Bertie are  
21 included in Senate District 1 with a bunch of eastern  
22 counties?

23 A. That's exactly right.

24 Q. And is it correct that Warren, Halifax, and Martin are  
25 included in Senate District 2 with Carteret and other coastal

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1 counties?

2 A. That is correct.

3 Q. And is it correct that Edgecombe is included in Senate  
4 District 5 with Pitt County?

5 A. Yes. Edgecombe is in a different district.

6 Q. Is it correct that Vance County is included in District  
7 11 along with Franklin and Nash Counties?

8 A. That's correct.

9 Q. And is it accurate that Edgecombe and Vance are two of  
10 the largest of the Black-Belt counties?

11 A. They are two of the most populous.

12 Q. They are separated from the other Black-Belt counties in  
13 this map?

14 A. Yes. Halifax and Northampton, Hertford, Bertie, and  
15 Martin.

16 Q. Did this map reduce the Black Voting Age Population in  
17 all of -- in Districts 1, 2, and 5?

18 A. It did.

19 Q. And 11?

20 A. And 11, yes.

21 Q. Okay. What happened at the 2024 election in Senate  
22 District 2; do you remember that Tare Davis lost?

23 A. Yes. Senate District 2 which runs from Carteret County  
24 bordering Onslow up to Warren County on the Virginia border,  
25 and Tare Davis lost. I think he got 42, 43 percent.

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1 Q. Is he African American?

2 A. He is African American.

3 Q. Do you recall what happened in Senate District 11?

4 A. In Senate 11 --

5 THE COURT: Senate 1 or Senate 11.

6 MR. SPEAS: 11.

7 THE WITNESS: In Senate District 11 Vance, Franklin,  
8 and Nash County, there's a Black man ran named James Mercer.  
9 He lost. I think he got 47, 48 percent of the vote in that  
10 district.

11 BY MR. SPEAS:

12 Q. And in Senate District 4, do you recall that Raymond  
13 Smith lost also?

14 A. Raymond Smith lost in that district.

15 Q. Is he African American?

16 A. He is African American, as well as Mr. Mercer is African  
17 American.

18 Q. Now, going to Senate District 1. In Senate District 1,  
19 do you recall who the Democratic candidate was?

20 Ms. Harman-Scott; is that correct?

21 A. Yeah. The Democratic candidate lost in District 1 as  
22 well.

23 Q. Is she White or Black?

24 A. She's a Black candidate.

25 Q. She's what?

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1 A. She's a White candidate.

2 Q. Did a Black candidate win in Senate District 5?

3 A. Yes. That's -- Kandie Smith won in Pitt and Edgecombe  
4 Counties.

5 Q. What do you attribute Kandie Smith's win in Senate  
6 District 5?

7 A. First, Edgecombe County is one of the Black-Belt counties  
8 historically, but it was paired with Pitt County which is  
9 considerably larger.

10 Pitt County I think is experiencing a phenomenon that we  
11 hoped was happening to much greater degree in other parts of  
12 northeastern North Carolina. Pitt has similarities to other  
13 urban counties in North Carolina; but more importantly, it's  
14 got a powerhouse university there. Greenville is the biggest  
15 city in eastern North Carolina and is still growing. East  
16 Carolina University with over 20, 25,000 students and a huge  
17 faculty, a huge medical complex, and it extends around the  
18 entire region and influences the region, but it has the  
19 attributes of other urban areas. It's less -- the polarized  
20 racial voting factors is smaller in that area and so Black  
21 candidates have an opportunity to win in districts that have  
22 far less Black voter age population.

23 Q. And did Kandie Smith, Senator Smith benefit from White  
24 crossover voting in order to win that seat?

25 A. She does. She has. She was on the Greenville City



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1 Council, served as the Mayor for Greenville for a brief  
2 period.

3 Q. And let's turn for a moment, Senator Blue, to the process  
4 leading up to the enactment of Joint Exhibit 1. Could we pull  
5 Stipulation 28 up.

6 I'm going to read Stipulation 28 into the record: On  
7 October 22, 2023, the Southern Coalition for Social Justice  
8 submitted a letter to the members of the General Assembly  
9 appending a memo containing an analysis of the proposed Senate  
10 map conducted by Dr. Oskooii, I think. Senator Blue moved to  
11 place this letter and appended memo into the Senate  
12 Redistributing Elections Committee record.

13 Do you recall presenting that letter to your colleagues  
14 at the Legislature?

15 A. I do.

16 Q. Did you ask that your colleagues include that memo in the  
17 appended memo in the record?

18 A. I did, because we had been talking about polarized voting  
19 in the northeastern part of the state and whether there had  
20 been any study done as Stephenson required to determine  
21 whether or not the Gingles factors were present.

22 And at that time the Southern Coalition had done a study  
23 and they brought that to our attention. And after they had  
24 made the presentation, we had all gotten a copy of the letter,  
25 both of the leaders, the committee members as well as the

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1 leaders in both chambers. So having received that while we  
2 were still considering how to draw the maps, I offered it in  
3 evidence so it would be part of the record since there was no  
4 intention indicated that there would be an independent racial  
5 polarized voting study done to see whether Gingles factors  
6 were present in the districts we were drawing in the  
7 northeast.

8 MR. SPEAS: Could we pull up Plaintiffs' Exhibit 179  
9 please.

10 THE COURT: Mr. Speas, it's time for lunch. We're  
11 going to have a 45-minute recess for lunch.

12 (The proceedings were recessed at 12:01 p.m. and  
13 reconvened at 12:45 p.m.)

14 THE COURT: Welcome back. You may continue the  
15 direct examination of Senator Blue.

16 BY MR. SPEAS:

17 Q. Could we put Plaintiffs' Exhibit No. 179 up on the  
18 screen, please.

19 MS. RIGGINS: Excuse me, Your Honor. This is Alyssa  
20 Riggins, counsel for the Legislative Defendants. I just want  
21 to note for the record that the Legislative Defendants do have  
22 an objection to Plaintiffs' Exhibit No. 179.

23 We do not object to Senator Blue testifying about  
24 his knowledge of the document. However, we do want to note  
25 for the record that we have an objection to the document being

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1 admitted for the truth of the expert analysis that it  
2 contains.

3 THE COURT: Mr. Speas?

4 MR. SPEAS: We're not offering it for that purpose,  
5 Your Honor.

6 THE COURT: For the truth. Just for notice that he  
7 received it.

8 With that understanding, it'll be received not for  
9 the truth but that it is a document that Senator Blue received  
10 and in his capacity as a senator put in the record for the  
11 Senate proceedings, but not for the truth.

12 MS. RIGGINS: Thank you, Your Honor.

13 (Plaintiffs' Exhibit No. 179 was admitted into evidence.)

14 THE COURT: You may proceed.

15 BY MR. SPEAS:

16 Q. Senator Blue, Plaintiffs' Exhibit No. 179 is in front of  
17 you. It's an October 22, 2023, memo from the Southern  
18 Coalition for Social Justice. To whom was that addressed?

19 A. It was addressed to Senator Berger, the President Pro Tem  
20 of North Carolina Senate to Representative Tim Moore who was  
21 Speaker of the House at the time, members of the Committee on  
22 Redistricting in Elections of both the Senate and the House;  
23 and it was also addressed to me separately as a Democratic  
24 leader and to Representative Reives, but also as a member of  
25 the committee I got it, so I got it two different ways.

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1 Q. Did the legislature at any point invite the Southern  
2 Coalition for Social Justice to come to the legislature and  
3 discuss this report?

4 A. Not as far as I know of. I know the committees that I  
5 was in there was no indication.

6 Q. Did the General Assembly, to your knowledge, ask Dr.  
7 Oskooii himself to come to the General Assembly to discuss his  
8 report?

9 A. Not that I'm aware of.

10 Q. Did you have any questions yourself from any member of  
11 the legislature of the Republican majority about this report?

12 A. No, no, no -- well, of course, I mentioned it as I raised  
13 it in the committee that this raised some Gingles issues, but  
14 there was no action on it as far as I'm aware.

15 Q. And no Republican legislator came to you and asked  
16 questions about either the memo or the report itself?

17 A. No.

18 Q. To your knowledge did any Republican legislator go to any  
19 other Democrat in the House or Senate and ask questions about  
20 this report or the memo?

21 A. Not that I'm aware of.

22 Q. Senator, the parties have stipulated that you proposed  
23 two amendments to the 2024 map on October 20, 2024 -- 24,  
24 2023, both of which would have changed districts in  
25 northeastern North Carolina.

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1 If we could put a Legislative Defendants' Exhibit 1 up  
2 please.

3 Is Legislative Defendants' Exhibit 1 -- yes, 1, your  
4 Amendment 2 that you proposed to the Senate map in October of  
5 2023?

6 A. Yes, it appears to be the one that I submitted and  
7 offered.

8 Q. And what was the purpose of this amendment?

9 A. One of the key purposes was to try to address in the  
10 limited way that I could the -- what I consider the racially  
11 polarized voting in northeastern North Carolina and to  
12 reconstruct and preserve the districts that were being  
13 eliminated that were represented by Black members from the  
14 turn of the century almost forward.

15 Q. So you're trying to replicate as closely as you could the  
16 maps in --

17 A. 2018 and 2020, yes. The ones in the northeast that I  
18 said we never objected to, trying to recreate them as best I  
19 could.

20 Q. Could we put up Legislative Defendants' Exhibit 2.  
21 Senator, is this a map of the amendment proposed in  
22 Legislative Defendants' Exhibit 1?

23 A. It is.

24 Q. And looking at the map, is Senate District 3 in this  
25 amendment the green set of counties across the top of the map?

## D. Blue - Direct Examination

1 A. That's correct. It starts with Vance and ends -- let's  
2 see, yeah. It's five, five of the Black-Belt counties, six  
3 are involved, but five full counties.

4 Q. And did -- let's look at Senate District 5, which is the  
5 yellow district below the Senate District 3?

6 A. Uhm-uhm.

7 Q. Does that include Edgecombe, Bertie, Martin, and  
8 Washington Counties?

9 A. It does.

10 Q. And it includes them in their entirety?

11 A. In their entirety. Bertie, Washington, Martin, yeah,  
12 it's got...

13 Q. And if we can pull up Legislative Defendants' Exhibit 3.

14 A. Not Bertie, I was overlooking that. Bertie was not in  
15 it, but it's got in that district the other --

16 Q. It's in Senate District 4?

17 A. That's right.

18 Q. Senator, Legislative Defendants' Exhibit 3 is now in  
19 front of you.

20 Is this the other amendment to the northeastern map that  
21 you proposed in October of 2023?

22 A. It is.

23 Q. And if we could put up Legislative Defendants' Exhibit 4.  
24 Is this a map of the district proposed in Amendment 3?

25 A. It is.

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1 Q. And in this map do you include all of Edgecombe,  
2 Northampton, Hertford, Bertie, and Martin in Senate District  
3 3?

4 A. I do. And forgive me, either my glasses aren't  
5 working -- but it's a little blurry. But yeah, it includes  
6 those in District 3, Edgecombe, Northampton. Yeah, it's again  
7 the Black-Belt counties primarily.

8 Q. And does -- excuse me -- District 5 in that map include  
9 Vance, Warren, Halifax, Franklin, and part of Nash?

10 A. It does, yes.

11 Q. Were both of these -- did all Black legislators on the  
12 committee support both these amendments?

13 A. They did.

14 Q. Did any Republican member of the redistricting committee  
15 support either of these amendments?

16 A. Not that I'm aware of, no.

17 Q. Were both amendments tabled?

18 A. Yes, that's why I was capturing the answer as I did.  
19 They were tabled and there was no up or down vote on the  
20 amendment itself.

21 Q. Let me turn to another topic, Senator. Is it important  
22 to Black voters in North Carolina to have equal access to the  
23 right to vote?

24 A. Absolutely.

25 Q. Can voter ID laws impede that access of Black citizens?

## D. Blue - Direct Examination

1 A. It can, and it does.

2 Q. Has the General Assembly enacted laws in recent years  
3 that impeded the equal access of Black voters to the polling  
4 place?

5 A. Yes. Following the demise of Section 5 of the Voting  
6 Rights Act after it was basically made -- no longer  
7 applicable. The day following the Supreme Court decision, the  
8 Rules Committee chairman in the Senate, Senator Apodaca  
9 proposed a multiple page bill, probably 40-, 50-page bill,  
10 first time we had seen it, but it went to extensive ends to  
11 add issues that had been an anathema, if you will, to Black  
12 participation in voting. And we talked earlier about the  
13 voter ID being one of those.

14 That legislation was ultimately stricken, either a  
15 three-judge panel or the Fourth Circuit. And those are the  
16 kinds of things that impede African Americans' ability  
17 historically to access the ballot.

18 Q. Is it also important to Black voters in North Carolina  
19 that their votes carry the same weight as the votes of White  
20 citizens?

21 A. Absolutely. All votes ought to carry the same weight  
22 regardless of who's casting it.

23 Q. Are you familiar with the packing and cracking strategy  
24 sometimes used to draw the boundaries of legislative  
25 districts?



## D. Blue - Direct Examination

1 A. I am.

2 Q. Can you briefly tell the Court what that strategy is?

3 A. Yes. The strategy is to pack as many -- in my  
4 experience, if we're talking about African American voters or  
5 other voters who would be included in it as many as you can in  
6 as fewer districts. That's what we experienced in 2011.

7 None of the Senate -- one Senate district in northeastern  
8 North Carolina had a Black majority and the other eight Senate  
9 district represented by African Americans, none had a Black  
10 Voting Age Population I think in excess of 40, 45 percent;  
11 most of them were in the 30s, and that redistricting effort  
12 that was eventually overruled, overturned, packed Black voters  
13 into those districts. So if you have 35 percent district,  
14 they took it up to 50 percent. That's the concept of packing.

15 Cracking is in the opposite direction. You have  
16 concentrations of minority voters and you decide to break  
17 them. Rather than putting them in districts where they could  
18 basically exercise their right to choose a candidate of  
19 choice, you split them out into multiple districts so they  
20 don't make the majority or they don't make an operating  
21 majority in those districts that you split them out to.

22 Q. Did the map enacted by the -- pardon me.

23 Did both the Legislative and Congressional maps enacted  
24 by the General Assembly in 2012 employ that cracking, packing  
25 strategy with regard to Black voters?

## D. Blue - Direct Examination

1 A. It did.

2 Q. And were both of those maps used for the 2014 -- 2012,  
3 2014, and 2016 elections?

4 A. Those maps enacted in 2011 were in use in the 2012, 2014  
5 and the 2016 elections. And that's why I pointed out earlier  
6 that in the 2018 and the 2020 elections, the court had ruled  
7 and we ran those elections under new maps.

8 Q. And the 2012 legislation was invalidated by the federal  
9 courts as a racial gerrymander?

10 A. Yes.

11 Q. Two or three other questions. Why are you a Democrat?

12 A. Why am I?

13 Q. Yes.

14 A. Because it's my experience in my adulthood that Democrats  
15 currently represent the expressed aspirations of most African  
16 Americans. It wasn't always like that, but from roughly the  
17 enactment of the Voting Rights Act and the Civil Rights Act in  
18 the 1960s, '64 and '65, African Americans have identified with  
19 the Democratic Party because they think the party articulates  
20 their concerns.

21 Prior to that, even as I was growing up as a youngster, a  
22 significant number of the African Americans that I knew, those  
23 who could vote, whether it was teachers, my grandfather's  
24 friends and all of those, identified with the Republican  
25 Party. One of those things that broke that -- and that had

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1 been the case since the 1860s up through the Reconstruction  
2 era, and up to the initiation of Jim Crow laws by democratic  
3 legislators in the South primarily. And so the identity had  
4 been with the Republican Party. That started changing  
5 significantly in the 1960s.

6       Eisenhower was one of my favorite politicians when I was  
7 growing up.

8 Q.    Was your grandfather Republican?

9 A.    He is, friends, and all of them related to him around  
10 there, that's what they talked about. The preacher, I said  
11 the teachers. If they talked about elections, they would  
12 usually talk about Republican. Who played a major role, I  
13 might add, in the enactment of the Voting Rights Act and the  
14 Civil Rights Act in the '60s.

15 Q.    Yeah. Excuse me. Is it your view, Senator, most -- that  
16 most Black voters vote for the Democratic Party not out of  
17 allegiance to the party but out of support for the policies  
18 and views on issues expressed by the Democratic Party  
19 generally?

20 A.    That -- that's what overwhelming majority of Black voters  
21 expressed to me and that's my feeling about it, that it's a  
22 question of the issues that are championed and how the Black  
23 community thinks those issues advance their ability to have  
24 full citizenship and participation in this country.

25 Q.    One last question, Senator. Based on your experience, if

## D. Blue - Cross-Examination

1 anybody wants to know or understand what level of Black Voting  
2 Age Population is needed to elect the Black-preferred  
3 candidate, you got to look at specific areas in counties?

4 A. Yes, you do. There's racially polarized voting  
5 statewide, there's no question about that, but it's only  
6 relevant if it affects the target group's ability to elect  
7 their candidates of choice. You can't successfully argue that  
8 there's racially polarized voting to the extent that it  
9 affects the election of Black candidates in Wake County. You  
10 can't argue it in Mecklenburg County, can't argue it in  
11 Durham.

12 I mean, a series of counties that you could -- you cannot  
13 make a case that racially polarized voting is to the extent  
14 that it affects the ability of minorities to elect their  
15 candidate of choice.

16 Q. The one place you can make that case is in northeast  
17 North Carolina?

18 A. You can easily make it in northeastern North Carolina  
19 now.

20 MR. SPEAS: Thank you. No more questions at this  
21 point.

22 THE COURT: Cross-examination.

23 MS. RIGGINS: Thank you.

24 CROSS-EXAMINATION

25 BY MS. RIGGINS:

## D. Blue - Cross-Examination

1 Q. Good afternoon, Senator Blue. It's nice to see you  
2 again.

3 A. Same here.

4 Q. All right. Just by way of reminder, my name is Alissa  
5 Riggins, counsel for the Legislative Defendants.

6 Speaker Blue, am I correct that you told Mr. Speas  
7 earlier this morning that you were the Speaker of the North  
8 Carolina House for two terms?

9 A. That's correct.

10 Q. And you were the Speaker of the North Carolina House when  
11 the 1991 redistricting cycle began; is that right?

12 A. That's correct.

13 Q. All right. And you were also a member of the North  
14 Carolina General Assembly during the 2001 redistricting  
15 process; is that right?

16 A. I was.

17 Q. And you are aware, Senator Blue, that the General  
18 Assembly redistricted again after the Stephenson decisions; is  
19 that right?

20 A. Yes.

21 Q. Do you know how many majority-Black Senate districts  
22 there were in North Carolina after the redraw in 2003 from the  
23 Stephenson decision?

24 A. After the redrawing in 2003, you mean, Black districts or  
25 districts that were represented by Black senators?

## D. Blue - Cross-Examination

1 Q. That's an important clarification. Thank you, Senator  
2 Blue.

3 Do you know how many Senate districts were majority-Black  
4 Voting Age Population from 2003 to --

5 A. After the 2003 redistricting, it's my recollection that  
6 there was only one Senate district that was majority -- when I  
7 say "majority," over 50 percent African American. That was  
8 the one involving Edgecombe County, and I forget the other  
9 counties, maybe Halifax were appended to it. There were other  
10 districts represented by Black senators.

11 In that period the seat that I have was represented by a  
12 Black senator who came in, in 2003 as a result of Stephenson  
13 and it had -- in the low 40s. I don't remember exactly where  
14 it was, maybe 41, 42 percent, and it went down in the 30s as  
15 the decade went on.

16 There was a district in Charlotte that was represented by  
17 a Black senator who defeated a powerful Democrat, Chair of  
18 appropriations that had maybe 31, 32 percent. And most of the  
19 districts ranged in and from -- from, maybe a couple of them  
20 in the high 40s, I'm not sure exactly now, to a district that  
21 had eight percent African American participation, the Orange  
22 County District I think, Orange and Randolph was one of the  
23 configurations. Same thing with one around Burlington.

24 Q. And so, Senator Blue, you mentioned the Covington case a  
25 little bit ago to Mr. Speas; is that right?

## D. Blue - Cross-Examination

1 A. Uhm-uhm.

2 Q. Do you recall testifying in the Covington trial?

3 A. I think I probably did. I mean, I don't remember  
4 specifically. If you refresh my recollection, I can tell you.  
5 But I've testified in a good number of these cases over time  
6 given my view of what happened.

7 I remember Covington, in fact, and the three elections  
8 that we had before Covington changed the law -- not changed  
9 the law; changed the result.

10 Q. Senator Blue, since you don't quite remember if you  
11 testified in the Covington litigation, I guess you would not  
12 remember if Mr. Speas asked you how many majority-Black Senate  
13 districts there were from 2003 to 2010?

14 A. You mean -- I remember that question being put to me. Do  
15 you mean after the 2011 redistricting? You asked me what the  
16 Black makeup was after Stephenson, and I was looking at the  
17 redistricting from 2003 to 2010. Those are the numbers I was  
18 talking about.

19 After the redistricting effort in 2011 and -- there  
20 were -- at least seven or eight of the districts had  
21 majority-Black Voting Age Population in them.

22 The Guildford County district did, that was one that was  
23 specifically overturned. The Cumberland County district did.  
24 I think there were a couple in Charlotte. But, yeah, most of  
25 the districts represented by Black senators had somewhere in

## D. Blue - Cross-Examination

1 the neighborhood of 50 percent Black population.

2 Q. Okay. So you do not recall testifying about the  
3 districts, the Senate districts that were in place from 2003  
4 to 2010 in the Covington trial, do you, Senator Blue?

5 A. I mean, you can refresh my recollection. I'm trying to  
6 recall specifically.

7 Q. Sure.

8 MS. RIGGINS: Mr. Williamson, can we please pull up  
9 Mr. -- Senator Blue's testimony in the Covington case?

10 MR. SPEAS: Do we have a copy of it?

11 MS. RIGGINS: I can give you a paper copy, but it's  
12 going to come up on the screen.

13 BY MS. RIGGINS:

14 Q. Do you see it on the screen there, Senator Blue, or would  
15 you also like a paper copy?

16 A. I see it on the screen. Yeah.

17 Q. So on the screen, Senator Blue, do you see at the top of  
18 this page it says, "Senator Blue direct by Mr. Speas?

19 A. Okay. This was in Covington, I take it?

20 Q. Yes.

21 A. Sure. Okay.

22 Q. Can we look down to line 15?

23 A. "Do you remember how many majority African American  
24 districts there were in the 2003 plan?"

25 Q. Yes.



## D. Blue - Cross-Examination

1 A. Okay. And then my answer?

2 Q. Yes, at line 25.

3 A. "There were no majority African American districts in the  
4 2003 Senate district plan." And I'm trying to recall I think  
5 that we may have had 9 or 10 majority-minority House  
6 districts, but it's my recollection that other than the  
7 district around Edgecombe County, all of the other districts  
8 had less than 50 percent Black Voting Age Population -- all of  
9 the other districts represented by minority senators from 2003  
10 to 2010.

11 Q. But you told Mr. Speas in the Covington case, didn't you,  
12 Senator Blue, that there were no majority-Black Senate  
13 districts under the 2003 Senate Plan; isn't that right?

14 A. Oh, yeah, that's what I said. But as I looked at the  
15 data, it's obvious that the Edgecombe County district -- and  
16 it may not have, but I seem to recall that it may have had 50  
17 percent, not a much higher number, but all of the others had  
18 no Black majority, and that was the issue that I was arguing  
19 or at least trying to bring people's attention to in the  
20 2011-2012 redistricting; that all of a sudden these districts  
21 had 50 percent plus Black Voting Age Population in them.

22 Q. And Senator Blue, you served in the North Carolina Senate  
23 since 2009; is that right?

24 A. I came back in 2009, yes.

25 Q. And you were the Democratic Senate leader from 2013 to

## D. Blue - Cross-Examination

1 2024; is that right?

2 A. That's correct.

3 Q. And for the previous legislative session, the session  
4 that was from 2023 to 2024, would you agree with me that there  
5 were nine African American senators?

6 A. Yeah. I think that's the right number. I could count  
7 them and stuff; but, yeah, it fluctuated between eight, and  
8 now there are 10, yeah.

9 Q. Who's the current Senate Democratic leader, Senator Blue?

10 A. The first Senate Democratic leader, Senator Blue?

11 THE COURT: Current.

12 THE WITNESS: Oh, current. The current Democratic  
13 leader. Sydney Batch. Senator Sydney Batch. She became the  
14 leader on January 1.

15 BY MS. RIGGINS:

16 Q. Is Senator Batch African American?

17 A. She is.

18 Q. So if there are 10 senators currently serving in the  
19 North Carolina House that are African American --

20 THE COURT: In the House or in the Senate?

21 THE WITNESS: I'm sorry. In the Senate. Thank you,  
22 Your Honor. I'll start over.

23 BY MS. RIGGINS:

24 Q. If there are 10 African American senators currently  
25 serving in the North Carolina Senate this term, that means

## D. Blue - Cross-Examination

1 there is one more than there was last term; is that right,  
2 Senator Blue?

3 A. I think it's one more because Sydney is elected from Wake  
4 County from a district that's less than 20 percent Black.

5 Q. You currently represent Senate District 14, Senator Blue;  
6 is that right?

7 A. That's correct.

8 Q. And in the current version of Senate District 14, it is  
9 not majority-Black Voting Age Population in your district, is  
10 it?

11 A. That's correct. It's -- it's majority-minority populated  
12 because there's a very big Latino population in my district,  
13 but it's not majority Black. It's 40-some percent now. After  
14 Covington, they went back and changed most of these districts  
15 where they had overloaded them with Black Voting Age  
16 Population.

17 Q. I think you told this to Mr. Speas earlier. But after  
18 the 2011 redistricting cycle, there were several Senate  
19 districts that were drawn to have a Black Voting Age  
20 Population above 50 percent. Do you recall that, Senator  
21 Blue?

22 A. I remember that.

23 Q. And you complained about that quite a bit, didn't you,  
24 Senator Blue?

25 A. I did. I did. I thought it was un -- unduly packing

## D. Blue - Cross-Examination

1 Black voters into these districts where Black candidates  
2 already won.

3 And mind you, my desire and intent was to try to get away  
4 from having to count population of any group, minority or  
5 otherwise, and that's part of why I was complaining that they  
6 were packing all the minorities in as fewer districts as  
7 possible.

8 Q. So you recall criticizing the 2011 Senate Plan as an  
9 illegal packing strategy?

10 A. Absolutely. Absolutely.

11 Q. Do you also recall criticizing the 2011 plan because the  
12 idea that only Black people will vote for Black candidates was  
13 a Mississippi or Alabama approach to redistricting?

14 A. I'm not going to speak negatively of Mississippi and  
15 Alabama, but it was my experience that they were much more  
16 proficient at drawing districts like that. Maybe they  
17 determined that they needed them worse than we had in North  
18 Carolina.

19 But I probably said that because we had not had to go to  
20 the extremes that they did -- and I tell you why, if I could.  
21 In the 19 -- in the 1980 redistricting cycle, I was on the  
22 committee and we drew a district in northeastern North  
23 Carolina involving Pitt County that was 68 percent African  
24 American, and it was my impression that that was plentiful if  
25 you really had to draw a Black district.

## D. Blue - Cross-Examination

1       The United States Justice Department objected to it and  
2 made us go back and made us draw another district with a  
3 heavier Black percentage in it. And we went through the same  
4 routine again in the 1990s, and my position consistently had  
5 been that you don't need to go to great lengths to put huge  
6 numbers in these districts. You're working against what I  
7 think the stated desire and policy ought to be in moving away  
8 from having to consider race in these districts at all.

9 Q. All right. Senator Blue, you were on the Senate  
10 Committee for Redistricting in Elections in 2021; is that  
11 right?

12 A. I was.

13 Q. All right. And in preparation for redistricting after  
14 the 2020 Decennial Census, you personally did not conduct any  
15 statistical analysis regarding racially polarized voting, did  
16 you?

17 A. I did not, no.

18 Q. And you likewise did not hire anyone to conduct a  
19 statistical analysis into racially polarized voting following  
20 the 2020 Decennial Census data release, did you?

21 A. No. I was not running the committee. It was the  
22 committee's duty to do it if it was going to be done because  
23 that's what Stephenson said the first thing you do is to  
24 determine whether the Gingles factors are present and you deal  
25 with them to address Section 2 before you start any other

## D. Blue - Cross-Examination

1 redistricting using the Whole County Provision or otherwise.

2 Q. I think I heard you mention this to Mr. Speas this  
3 morning. I think your testimony, Senator Blue, that in 2018  
4 the General Assembly was able to harmonize Section 2  
5 compliance in compliance with Stephenson.

6 A. I didn't say the General Assembly intentionally  
7 harmonized it. It just so happened the way the districts came  
8 out, it did harmonize those two as Stephenson had said you  
9 ought to do.

10 We considered the districts that had been up there, I  
11 think it was 4 and maybe 2. We considered the district that  
12 had been up there to be compliant with Stephenson because in  
13 my mind at that time they sufficiently addressed the Gingles  
14 issues. They recognized that there was polarized voting  
15 without having done -- a racially polarized voting without  
16 having done the study then, but there were others who had done  
17 the study along the way. And as a result of the Court  
18 rejecting the 2011-2012 plan that we ran the 2012, 2014, and  
19 2016 races on, everybody knew what you needed to do. So we  
20 agreed with the districts in the northeast in the 2015 plan as  
21 well as the 2020 plan, because they preserved these districts  
22 that had been in place to address the -- in 2003.

23 Q. Given your previous experience with redistricting,  
24 Senator Blue, would you agree with me that the Decennial  
25 Census data usually becomes available in February or March of

## D. Blue - Cross-Examination

1 the next year?

2 A. Historically it had, yeah. There was a problem with it,  
3 I think, to some limited extent in 2020. It might have been a  
4 month late or something like that.

5 Q. So you do recall that the 2020 Census data release was  
6 delayed in 2021?

7 A. Yeah. Because of COVID and various other reasons. It  
8 was delayed from where we had gotten it even without all of  
9 the technology in 2081 [sic], 2091 [sic], 2001, 2011, it was  
10 substantially later in 2020.

11 Q. Do you recall when the Senate redistricting plan was  
12 passed in 2021, Senator Blue?

13 A. The 2021 plan would have been passed I think it was after  
14 the summer, it was sometime in the fall. I'm trying to think  
15 exactly when. I know that one of them wasn't enacted until  
16 late October. It might have been the last one. But the habit  
17 had been to push it as close to the line and play the clock as  
18 tightly as you could. So it was in the latter part of 2021  
19 that we enacted the plan.

20 Q. And you agree with me, Senator Blue, that the bill that  
21 was signed that created the 2021 Senate Plan would have a date  
22 on it?

23 A. Yeah.

24 Q. And you would you agree with me, Senator Blue, that the  
25 2022 elections were not conducted under that Senate Plan

## D. Blue - Cross-Examination

1 passed in 2021; is that right?

2 A. That's correct. As I recall, the Supreme Court issued  
3 some opinion, maybe in December of 2021, that had us vote over  
4 with different maps, I think. I don't remember what it was,  
5 but I remember we did not have it as scheduled.

6 Q. So is it your recollection, Senator Blue, that a group of  
7 plaintiffs was able to come in and challenge the 2021 maps and  
8 then there was a court process that insisted that the General  
9 Assembly redraw for the 2022 election?

10 A. Yes.

11 Q. Do you recall how many Stephenson county grouping options  
12 there were for northeastern North Carolina after the 2020  
13 Census was released?

14 A. Yeah. The clusters is what you're referring to, I take  
15 it?

16 Q. I can call them clusters. I call them groupings, but I'm  
17 happy to call them clusters, if that's what you call them.

18 A. That's the technical name we used were clusters. There  
19 were two clusters that were chosen for the northeastern part  
20 of the state, but those clusters were chosen before there was  
21 a determination whether Section 2 had been complied with and  
22 whether there were Gingles factors that had to be considered  
23 and consequently those districts drawn. And so there was a  
24 choice between those two clusters.

25 One of the clusters had a Black Voting Age Population of



## D. Blue - Cross-Examination

1 42, 43 percent, and the other had a -- and it also had most of  
2 the Black-Belt counties in it.

3 Another cluster that had been created by simply running  
4 them in the computer in the northeast had substantially less,  
5 maybe 30 percent Black Voting Age Population, but one clearly  
6 had a substantial higher number of BVAP than the other. And  
7 in the 2021 redistricting, we chose the one that had the  
8 highest Black Voting Age Population as the one that would be  
9 in effect for 2022 initially.

10 Q. I want to be sure I understand your testimony, Senator  
11 Blue.

12 Let's take a step back for a minute.

13 A. Okay.

14 Q. Is it your understanding that neither of the two  
15 Stephenson county clustering options for northeastern North  
16 Carolina would create a majority-Black voting age district in  
17 that area of the state?

18 A. As the way the clusters were spit out by the computer.  
19 But, again, these were clusters done statewide without  
20 considering whether there were requirements that flowed from  
21 Section 2 because of the Gingles factors.

22 Q. Do you recall if you had a preferred county cluster in  
23 2021?

24 A. Yes. Between the two that I just described, the  
25 preferred county cluster was the one that had a 43 percent

## D. Blue - Cross-Examination

1 Black Voting Age Population.

2 Q. Do you recall if your preferred county cluster was used  
3 in the 2011 -- I'm sorry -- in the 2021 Senate Plan that was  
4 passed?

5 A. That was the cluster in '21, yes. That was the one that  
6 was chosen, if I recall correctly. And that one was not  
7 changed under the map that we actually had the 2022 elections  
8 one.

9 Q. All right. Senator Blue, is it your testimony that there  
10 were no changes to the districts in northeastern North  
11 Carolina between the 2021 plan and the 2022 plan?

12 A. The 2022 election was run on the cluster that had been  
13 considered in the 2022 plan that was not the one that we voted  
14 on. Follow me on that?

15 Q. So the county clusters in northeastern North Carolina  
16 changed between the 2021 redistricting plan and the 2022  
17 redistricting plan?

18 A. Not the clusters, the chosen grouping, the chosen cluster  
19 in the plan was to have the district that had the higher  
20 percentage of BVAP, Black Voting Age Population, as opposed to  
21 the coastal district that ran from Carteret County to Warren  
22 County, the new configuration.

23 Q. All right.

24 A. There were two choices in the two clusters up in the  
25 northeast.

## D. Blue - Cross-Examination

1 Q. And the cluster that was originally chosen for the 2021  
2 Senate Plan was not your preferred cluster, isn't that true,  
3 Senator Blue?

4 A. If it was the one that went from Carteret County, and if  
5 I were looking at the map, I could tell you specifically but  
6 don't see the map you're talking about. But the one that went  
7 from Carteret County to Warren County never was my preferred  
8 district.

9 Between the two, my preferred district was the one that  
10 basically kept the Black-Belt counties together.

11 Q. Would it help refresh your recollection, Senator Blue, if  
12 I showed you the 2021 Senate Plan?

13 A. It would.

14 Q. Can we please pull up Joint Exhibit 3?

15 Do you see that on your screen, Senator Blue?

16 A. I see that.

17 Q. All right. So for Senate Districts 1 and 2 your  
18 preferred Senate county clusterings?

19 A. This was the map in 2022 that came from the cluster.

20 Q. Okay. Can we zoom --

21 A. There are two clusters, you can flip them. And as I  
22 recall, this cluster that went one, two, three, four, 20 --  
23 I've confused myself on this one, because the cluster that  
24 came out in the first 2021 map, it was my recollection that it  
25 had the majority of -- a substantial number of the Black-Belt

## D. Blue - Cross-Examination

1 counties in them because it was the district that Valerie  
2 Jordan won in, that was my impression; that the cluster that  
3 you're talking about -- lost in, was the one that Valerie  
4 Jordan ran in, in 2022.

5 Q. The map in front of you, Senator Blue, do you have an  
6 understanding of what it is?

7 A. If this is the map that she was supposed to run in --  
8 this isn't the map that we conducted the elections on, is it?  
9 I'm asking you. If you tell me whether it's the one we  
10 conducted the election on, I can tell you.

11 Q. Yeah. So Senator Blue, unfortunately I'm not allowed to  
12 testify today. Do you see that this is the 2021-173 Session  
13 Law?

14 A. Yes.

15 Q. So does this appear, Senator Blue, to be a map that was  
16 passed in 2021?

17 A. It would appear to be that. It would be Session Law  
18 2021-173.

19 Q. And I think we talked about this a few minutes ago,  
20 Senator Blue. You recall that there was a new redistricting  
21 plan put in place for the 2022 elections, don't you?

22 A. Uhm-uhm.

23 Q. So I can represent to you, Senator Blue, the 2021 plan  
24 was not used for the 2022 election.

25 A. That's absolutely right, yes.

## D. Blue - Cross-Examination

1 Q. Okay. All right.

2 And so Senate District 1 and 2 here in Session Law  
3 2021-173, were those your preferred county clusters?

4 A. In this --

5 Q. In Joint Exhibit 3 in front of you, Senator Blue.

6 A. Those were not my preferred county clusters.

7 Q. Okay. And in fact, did you offer an amendment to change  
8 the county clusters in northeastern North Carolina in 2021?

9 A. I think I offered two amendments.

10 Q. I'm asking you if you recall offering an amendment in  
11 2021 that would change the county clusters in northeastern  
12 North Carolina?

13 A. And my answer would be yes, I remember trying to revert  
14 the county clusters back to what the clusters looked like that  
15 came out of the original redistricting committee before it  
16 considered whether or not Section 2 had been complied with.

17 Q. All right. Do you recall criticizing this 2021 Senate  
18 Plan in front of you as a partisan gerrymander, Senator Blue?

19 A. I don't recall saying that, but it -- I don't recall  
20 saying that.

21 Q. Do you recall giving a deposition in this case, Senator  
22 Blue?

23 A. I do.

24 Q. Okay. Do you recall that I asked you in that deposition  
25 if you recalled criticizing the 2021 plan as a partisan

## D. Blue - Cross-Examination

1 gerrymander?

2 A. I don't recall. If you showed me my testimony, I'll tell  
3 you whether I remember it, because it's all kinds of  
4 gerrymanders in. I think it's the Section 2 violation as  
5 well.

6 Q. Can we please pull up Senator Blue's deposition in this  
7 case?

8 This is page 53 of your deposition, Senator Blue, and I'd  
9 like to look at line 22, if we could.

10 A. Twenty-two?

11 Q. Yes, sir.

12 A. I said, "Probably did."

13 Q. So I asked you: "After the 2021 redistricting plan was  
14 passed for the Senate, do you recall criticizing the plan as a  
15 partisan gerrymander?"

16 And you answered: "Probably did, because that's what it  
17 was."

18 Is that right, Senator Blue?

19 A. I don't deny that I said that.

20 Q. Okay. Do you have an understanding, Senator Blue, of  
21 whether the Senate districts in northeastern North Carolina  
22 under the 2021 plan are the same districts that are challenged  
23 today?

24 A. I said that it was a partisan gerrymander and it was a  
25 gerrymander that did not consider whether there was a

## D. Blue - Cross-Examination

1 Section 2 violation, because that wasn't in it. But again,  
2 this is the map that was rejected in 2021 and the election was  
3 not held on it, then it's a map that we criticized and it's a  
4 map that I think did not comport with the law.

5 Q. Senator Blue, my question was a little bit different.

6 A. Okay.

7 Q. Do you recall if the districts passed in the 2021 Senate  
8 Plan for northeastern North Carolina, Senate Districts 1 and 2  
9 in the Joint Exhibit 3 we just looked at, are those the same  
10 Senate districts that were passed in the 2023 Senate Plan?

11 A. Show me the 2023 plan and then I can answer it. And I'm  
12 not being funny I just --

13 Q. No. I understand I'm a visual learner too, Senator Blue,  
14 of course. Can we pull up Joint Exhibit 1 please. All right.

15 Do you see at the top of Joint Exhibit 1 here, Senator  
16 Blue, it says, SL 2023-146?

17 A. I see that, yes.

18 Q. Does the configuration in Senate Districts 1 and 2 here  
19 look similar to Joint Exhibit 3 that we looked at a few  
20 minutes ago? And I'm happy to pull up Joint Exhibit 3 for you  
21 too if you'd like, Senator.

22 A. Yeah. Can you overlap them. Let me see whether they're  
23 the same.

24 Q. I'm not the tech person, but I'm hopeful we can do that.

25 A. All right. Put them on two screens and I can tell you

## D. Blue - Cross-Examination

1 whether they're the same.

2 Q. Do you see Joint Exhibit 1 and Joint Exhibit 3?

3 A. I see them now. They appear to be the same and they're  
4 the same that I tried to amend.

5 Q. Senator Blue, Mr. Speas asked you earlier this afternoon  
6 about a letter you received from the Southern Coalition for  
7 Social Justice; is that right?

8 A. Yes.

9 Q. All right. I'd like to take a look at that letter if we  
10 could please. Mr. Williamson, that's Plaintiffs' Exhibit No.  
11 179.

12 I'd like to go to page 3 of this letter, please. Do you  
13 see here in page 3 of this letter, Senator Blue, in the last  
14 paragraph that it states that the current Senate Districts 1  
15 and 3 would provide Black voters in this area with an  
16 opportunity to elect a candidate of their choice?

17 A. The last paragraph on that page?

18 Q. Yes.

19 A. Okay. They say that the last sentence -- next to the  
20 last sentence: And current Senate Districts 1 and 3 would  
21 provide Black voters in this area an opportunity to elect a  
22 candidate of their choice.

23 Q. Yes.

24 A. Also contained in Appendix A as a racially polarized  
25 voting study examining elections in current...



## D. Blue - Cross-Examination

1 Q. Did you agree with the statement that current Senate  
2 Districts 1 and 3 would provide Black voters in this area with  
3 an opportunity to elect a candidate of their choice in October  
4 of 2023?

5 A. Did I agree with that in October of 2023?

6 Q. Yes, sir.

7 A. No, because they had not complied with the Section 2, but  
8 it was the best choice available at the time and, you know,  
9 legislative process is to take the most you can get at any  
10 given time.

11 And I say that because now in recollecting the -- I don't  
12 know how it's numbered on the maps that you showed me, but the  
13 number in the extreme northeast was the one that didn't wander  
14 all over eastern and central North Carolina and so between the  
15 two of them if that was the choice because of the clusters,  
16 then that one was more preferable -- was preferable, rather.

17 Q. All right. Do you recall us looking at this letter and  
18 this sentence specifically that Senate Districts 1 and 3 would  
19 provide Black voters under this area with an opportunity to  
20 elect a candidate of their choice in your deposition?

21 A. I probably -- yeah. I looked at it. I remember seeing  
22 it when you deposed me, yes.

23 Q. And do you recall that I asked you then if you agreed  
24 with that statement specifically in October of 2023?

25 A. I don't recall specifically, but whatever is written is

## D. Blue - Cross-Examination

1 what I said.

2 Q. Okay. Would you like me to refresh your recollection?

3 A. Please.

4 Q. Could we please pull up page 60 of Senator Blue's  
5 deposition, Mr. Williamson.

6 So you'll see here at line 5 I directed you to page 3 in  
7 the last paragraph we were just discussing. Do you see at  
8 line 12, Senator Blue, I asked you, "Did you agree with that  
9 statement in October of 2023"?

10 A. Yeah. Now read my response, "I did. I did. I agreed  
11 with the statement given the choices. The choice that I put  
12 forth in amendment, whatever the number was, Exhibit 6 and  
13 Exhibit 5 were more reasonable efforts to ensure the  
14 minorities in northern Eastern North Carolina had a fair  
15 opportunity or a better opportunity to elect their candidate  
16 of choice."

17 Q. All right. Thank you, Mr. Williamson.

18 I'd like to talk about the amendments that you offered to  
19 the 2023 plan, Senator Blue, that you discussed with Mr. Speas  
20 earlier.

21 A. Okay.

22 Q. Mr. Williamson, could we please pull up Legislative  
23 Defendants' Exhibit 2.

24 Do you recall looking at this with Mr. Speas earlier this  
25 afternoon, Senator Blue?

## D. Blue - Cross-Examination

1 A. Yeah. This is one of the maps. LD02?

2 Q. Yes.

3 A. Yes.

4 Q. This is a visual map of Amendment A2 that you offered to

5 the 2023 Senate Plan; is that right?

6 A. Uhm-uhm.

7 Q. Okay. Amendment A2 that you offered to the 2023 Senate

8 Plan splits Pitt County into three different districts; is

9 that right, Senator Blue?

10 A. That's correct.

11 Q. And it splits Wilson County into two different districts;

12 is that right, Senator Blue?

13 A. That's correct.

14 Q. And are Wayne and Lenoir Counties also split into two

15 different districts here?

16 A. That's correct.

17 Q. Okay. And under the 2023 Senate Plan, are all of those

18 counties kept whole?

19 A. Under the 2023 Senate Plan, yes, they're kept whole.

20 That's why I said, "given the choices," and this amendment was

21 the opportunity to draw them in such a way that Section 2 was

22 honored and observed. But the choice that we had was to

23 choose the clusters that had been presented. And the way the

24 clustered were presented, you choose between the two that you

25 can make a choice on. And one was better than the other.

## D. Blue - Cross-Examination

1 It's just that simple.

2 But there still had been no compliance with Section 2  
3 because there hadn't been a determination as to whether there  
4 were Gingles factors present and whether they had been  
5 addressed.

6 Q. And Senator Blue, you offered this amendment on the  
7 Senate floor; is that right?

8 A. I did.

9 Q. And you did not offer this amendment in the Senate  
10 Redistricting Committee that you're a member of before  
11 offering it on the Senate floor, did you?

12 A. I did not.

13 Q. And you believe that that amendment in front of you would  
14 probably have created a district with more than 50 percent  
15 Black Voting Age Population; isn't that right?

16 A. I don't know whether it was more than 50 percent. You  
17 have the numbers on it. But what I was convinced of is that  
18 it could elect a person of choice by the minority voters in  
19 that portion of the state.

20 This one might have more than 50 percent BVAP, but that  
21 was not really the goal that I was setting out to accomplish.  
22 It was trying to create a district where minorities could  
23 elect a candidate of their choice and it was informed by my  
24 belief that had been corrected in the 2022 election where I  
25 believed that the Black Voting Age Population in the low to

## D. Blue - Cross-Examination

1 mid 40s would be sufficient to overcome the bias in -- in --  
2 in voting in that district. The '22 election proved me wrong,  
3 because there was a district down there that had 43 percent  
4 Black majority -- Black voting age majority and she lost that  
5 district by two, three percentage points. And so that made me  
6 believe that you had to take the number in this area up to 46,  
7 47 percent again. You had to make up four points in the  
8 voting in the population in order to enable minorities in that  
9 district which was compact and which met all of the Gingles  
10 criteria in order for them to be able to elect a candidate of  
11 their choice.

12 Q. Do you recall that you offered a stat pack with this  
13 amendment, Senator Blue?

14 A. I did, but I just don't remember all of those numbers.  
15 But I did offer the full stat pack with this district.

16 Q. Do you recall that the stat pack that you offered did not  
17 contain racial data?

18 A. It did not contain racial data initially. They went back  
19 and put the racial data on it and calculated what the racial  
20 data was.

21 Q. Okay. So Senator Blue, you're looking at the first page  
22 of Legislative Defendants' Exhibit 2, but the stat pack is  
23 actually right behind this exhibit.

24 A. Okay.

25 Q. I'll ask Mr. Williamson if we can flip to the first page

## D. Blue - Cross-Examination

1 of that stat pack.

2 Do you see at the very bottom there's a gray box?

3 MS. RIGGINS: I'll ask Mr. Williamson to blow it up.  
4 I can't even see that. At the very bottom of the document.

5 THE WITNESS: The deviation range?

6 BY MS. RIGGINS:

7 Q. No. It's the gray part there. Do you see where it says,  
8 "This document was submitted by Senator Blue"?

9 A. Yeah. I don't doubt that this document was offered.

10 Q. Okay.

11 A. But if you look at the minutes, it was requested that you  
12 put racial data on these things. It might not be part of the  
13 record here, but it was requested that you put the racial data  
14 so you know what it ultimately looks like.

15 Q. And this stat pack that was attached to Amendment A2 and  
16 Legislative Defendants' Exhibit 2, whether it does or does not  
17 have racial data, the stat pack will reflect that, right?

18 A. No, but we asked the staff and the staff calculated  
19 racial data on these amendments.

20 Q. Do you know what the racial data was on the amendments?

21 A. I know that -- I'm not sure whether this one actually  
22 tried to get to 50 percent. The goal was with respect to the  
23 district that Valerie Jordan ran in and these districts that  
24 you see depicted here was to bring them up to a level that  
25 racially polarized voting would be overcome. That was the

## D. Blue - Cross-Examination

1 purpose. And that's why you see the county split; you see all  
2 of those things in order to make it compliant with Section 2  
3 and address the Gingles factors that existed in northeastern  
4 North Carolina.

5 Q. So if this stat pack does not contain racial data,  
6 Senator Blue, you don't know why that is?

7 A. Because the official position was that they weren't  
8 looking at race, but we knew what the numbers were. The staff  
9 ran the numbers saying what they look like up in this  
10 district.

11 Q. Were you aware that this amendment, Amendment A2 that you  
12 offered, double-bunked every Republican senator in  
13 northeastern North Carolina, Senator Blue?

14 A. I was not until somebody brought it to my attention.  
15 That was not my intent to do that. The intent was to comply  
16 with Section 2 of the Voting Rights Act.

17 Q. Sure. But you do agree with me, Senator Blue, that  
18 Amendment A2 that you offered to the 2023 Senate Plan did  
19 double-bunk every Republican senator?

20 A. You're telling me that. Did it double-bunk? If you tell  
21 me that it did, it did. But that was not my intent and not my  
22 goal. It was to preserve the districts that had operated in  
23 that area from its inception back in 2003, I guess, of these  
24 districts. It was not to double-bunk anybody, but it was to  
25 comply with Section 2 of the Voting Rights Act.

## D. Blue - Cross-Examination

1 Q. Can we please flip to page 53 of this exhibit.

2 Have you ever seen something called a District Incumbent  
3 Report in Legislative Stat Pack, Senator Blue?

4 A. It was probably part of the stat pack. In fact, I'll  
5 represent to you that based on the statement at the bottom of  
6 the page it was part of the stat pack.

7 Q. Thank you. We can take this down please.

8 A. I'm sorry. Go ahead.

9 Q. Oh, I'm sorry. I thought you were --

10 A. No. I was just trying to make sure who was -- who was in  
11 this list.

12 Q. We can pull it back up. Do you see that Senators Hanig,  
13 Sanderson, Barnes, Newton, and Perry all have their party  
14 listed as Republican?

15 A. Yeah. I think it's showing the senators who are in it.  
16 I'm not sure that the district that I proposed put these  
17 people in it. Their counties are in it. Their counties are  
18 in it.

19 Q. Do you see the column header on the left-most column  
20 says, "District in this plan"?

21 A. Uhm-uhm.

22 Q. This is the stat pack that was attached to your amendment  
23 A2; isn't that right, Senator Blue?

24 A. Uhm-uhm.

25 Q. And so you see that Senators Barnes, Newton, and Perry



## D. Blue - Cross-Examination

1 are double-bunked here; is that right?

2 A. I see they're in the same district. They would be in  
3 District 11, and one of them represents District 11 already,  
4 apparently in Nash County.

5 Q. Okay. Thank you, Senator Blue.

6 A. Okay.

7 Q. I'd like to look at Amendment A3 that you offered which  
8 is LD4. Do you recall discussing this with Mr. Speas earlier  
9 today?

10 A. Yeah.

11 Q. And this is a visualization of Amendment A3 that you  
12 offered on the Senate floor, is that right, Senator Blue?

13 A. Yes. If you represent that it was, I agree with you.

14 Q. Okay. And Amendment A3 splits Pitt County into two  
15 different districts; is that right?

16 A. It does. That has the yellow and sort of burnt brown  
17 color.

18 Q. And this amendment also splits Nash, Wilson, Wayne, and  
19 Lenoir Counties into two separate districts each; isn't that  
20 right, Senator Blue?

21 A. Yes.

22 Q. Okay. Do you know if racial data was used to draw this  
23 amendment, Senator Blue?

24 A. I'm sure it was. If I'm trying to comply with Section 2,  
25 how can you determine that you're addressing the issue if you

## D. Blue - Cross-Examination

1 don't use racial data?

2 Q. All right. I believe you talked about the Covington case  
3 a bit earlier with Mr. Speas and that the districts -- and  
4 there were some Senate districts that were struck down by  
5 Covington; isn't that right, Senator Blue?

6 A. That's correct.

7 Q. Do you recall what the district looked like in the 2011  
8 Senate Plan that centered around Greene County?

9 A. Lenoir and Greene County in the Senate Plan?

10 Q. Yes, sir.

11 A. No. If you can show it to me, I can tell you whether I  
12 remember it.

13 Q. Sure.

14 MS. RIGGINS: Mr. Williamson, would you mind pulling  
15 up Rucho Senate 2 which was passed in 2011 by the North  
16 Carolina General Assembly. Would you mind zooming in on  
17 Districts 5 and 7.

18 BY MS. RIGGINS:

19 Q. It's even a little hard for me to see, Senator Blue.

20 A. Okay. 5 and 7.

21 Q. Yes. Is that better?

22 A. This was the plan adopted in 2011?

23 Q. Yes, sir.

24 A. I recognize it. I see the claw in 14, which was the  
25 reason it was included in the suit. I see it now. Yeah, I

## D. Blue - Cross-Examination

1 recognize this.

2 Q. All right. And so Senate District 5 keeps Greene County  
3 whole in the map that we're looking at right now, Rucho Senate  
4 2; is that right?

5 A. That's correct.

6 Q. But it also splits Pitt County like your amendment in A3  
7 did; is that right?

8 A. It puts Pitt in two counties, yes.

9 Q. All right.

10 A. I mean two districts.

11 Q. And it also -- Rucho Senate District 2, that's the name  
12 of the plan, and Senate District 5, do you see that it also  
13 goes down into Lenoir County?

14 A. Uhm-uhm.

15 Q. All right. And your district also includes a portion of  
16 Lenoir County; is that right?

17 A. In my district?

18 Q. Yes. Your district, Amendment A3.

19 A. This is -- and I don't mean to be marking on it. I'm  
20 trying to -- you're comparing the districts, and I'm not  
21 looking at them as I do.

22 Q. If we put them side-by-side would that help you, Senator  
23 Blue?

24 A. That helps me, yeah.

25 Q. I'm happy to do that. All right. And if we zoom in on

## D. Blue - Cross-Examination

1 LD4 a little bit so we can see Greene, Lenoir, Pitt, and Wayne  
2 County a bit better, that might help.

3 Can you also zoom in on District 5 and 7 that we were  
4 just looking at earlier.

5 So Senator Blue, you see that your Amendment A3 also  
6 includes a portion of Lenoir County like District 5 did in  
7 2011; is that right?

8 A. I see that, yes.

9 Q. And do you see that your Amendment A3 includes an  
10 appendage into the center of Wayne County? Do you see that?

11 A. I see. Coming from Greene over to Wayne?

12 Q. Yes, sir.

13 A. Yes.

14 Q. And do you see that Senate District 5 in 2011 also  
15 includes an appendage into Wayne County from Greene County?

16 A. I see that.

17 Q. All right. Thank you.

18 A. Different areas, both of them intrude into Wayne County.

19 Q. You, likewise, did not offer Senate Amendment A3 in the  
20 Senate Redistricting Committee for elections, did you, Senator  
21 Blue?

22 A. I did not.

23 Q. So you only offered it on the Senate floor; is that  
24 right?

25 A. I did.

## D. Blue - Cross-Examination

1 Q. Okay. Were you also aware, Senator Blue, that Senate  
2 Amendment A3 also double-bunked Republican senators in  
3 northeastern North Carolina?

4 A. Who did it double-bunk? Maybe I can determine whether I  
5 was aware.

6 Q. Sure. Can we please pull back up Legislative Defendants'  
7 Exhibit 4. I believe it's on page 53.

8 A. I see the first it double-bunks two people on the coast,  
9 Hanig and Sanderson. And then Nash, Wilson, and Lenoir  
10 Counties, yep, adjoining counties.

11 Q. So all of the Republicans listed here are double-bunked;  
12 isn't that right, Senator Blue?

13 A. In that part of the state where they were split from  
14 where the Black population was moved from two or three  
15 districts to where they were spread among five districts I  
16 believe, yes. In order to correct what had been done you had  
17 to undo it and so it wasn't aimed at incumbents, it was just  
18 putting together the areas where these people had represented  
19 in the past in order to comply with Section 2 of the Voting  
20 Rights Act.

21 Q. Moving on to one last topic, Senator Blue. I believe  
22 that you discussed Senator Bazemore with Mr. Speas earlier  
23 this morning; is that right?

24 A. That's correct.

25 Q. Was she defeated by Valerie Jordan in the Senate

## D. Blue - Cross-Examination

1 Democratic Primary?

2 A. She was.

3 Q. I believe that Mr. Speas asked you earlier if Ms.

4 Bazemore was elected to the Senate District 3 in 2018 and

5 2020; do you recall that?

6 A. Yes.

7 Q. And you recall that Senator Bazemore was not elected to

8 Senate District 3 in 2018; is that right, Senator Blue?

9 A. She was elected two times. She served two terms.

10 Q. Do you recall a senator named Erica Smith?

11 A. Erica might have been in there. Yeah, I remember Erica.

12 She represent -- the number perhaps; but as I recall Bazemore

13 was elected two separate terms.

14 Q. And you believe that she was elected in 2018?

15 A. 2018 and 2020, because she wasn't elected in 2022.

16 Q. Okay. Do you have any recollection that Senator Smith

17 did not serve out her full term representing Senate District

18 3?

19 A. She was running for the Senate or some other higher

20 office, as I recall. And I don't -- I don't know that she

21 resigned. But in any event, a Black woman senator represented

22 that district two consecutive terms. If I'm wrong about the

23 number of terms that Ernestine served, and I could be, I mean,

24 that's a lot of data that you throw. But Erica represented

25 that district and Ernestine succeeded her.

## D. Blue - Redirect Examination

1 Q. When Senator Smith did not win --

2 A. Whenever she stepped down, yeah. And I think that  
3 Senator Smith represented it, but two or three times, yes.

4 Q. And Senator Smith ran for election in Senate District 3  
5 in 2018; isn't that right?

6 A. I don't dispute if that's what it shows. But my point  
7 was when I was addressing them is that an African American  
8 woman represented that district in the 2018 election and 2020  
9 election.

10 MS. RIGGINS: We have no further questions at this  
11 time. Thank you, Senator Blue, for bearing with me and thank  
12 you for your service for all these years in the General  
13 Assembly.

14 THE COURT: Redirect.

15 MR. SPEAS: Could we pull up Joint Exhibit 3  
16 quickly.

## REDIRECT EXAMINATION

18 BY MR. SPEAS:

19 Q. Senator Blue, just so that I'm not confused. Joint  
20 Exhibit 3 was a map enacted by the General Assembly in 2021  
21 but was not used?

22 A. Was not used. All of us voted against it.

23 Q. And for the -- for the 2022 election?

24 A. That's right. And the reason we voted against it is  
25 because it didn't address the issue of the Gingles factors in

## D. Blue - Redirect Examination

1 the northeast.

2 Q. Can we pull up Joint Exhibit 2.

3 Joint Exhibit 2 is the map that was used for the 2022  
4 election?

5 A. That's the map that was used in 2022.

6 Q. And in -- when this map was being debated, did you have  
7 any reason to believe the General Assembly was going to  
8 conduct a racially polarized voting study to see whether or  
9 not it needed to split counties in northeastern North Carolina  
10 to comply with the Voting Rights Act?

11 A. Well, the general -- well, the committee leadership as  
12 well as on floor had indicated they were not going to do a  
13 racially -- a race polarization voting study.

14 Q. Was Senate District 3 in that map about as good as you  
15 could possibly do if they weren't going to do what the law  
16 required them to do?

17 A. That's what I was trying to say. That's -- you choose  
18 what you have offered to you when you engage in this process.

19 And every amendment that we offered was defeated and we  
20 expected the ones that are offered splitting up these counties  
21 to be defeated, but it was an effort to show them that you can  
22 draw these districts if you follow the law.

23 Q. And do you recall that the Black Voting Age Population in  
24 Senate District 3 was about 43 percent?

25 A. It was 43 percent. And that's why I say that it was my



## D. Blue - Redirect Examination

1 belief that 43 percent BVAP would enable the residents in that  
2 area to elect a candidate of choice.

3 Q. Were you proved wrong?

4 A. I was wrong. I was wrong because she lost it. I think  
5 she won 47 -- between 47, 48 percent. So I was off by four  
6 points, and that's why when I was trying to draw other maps I  
7 was trying to bring it up to the 47 percent level. I did not  
8 try to bring it to 50 percent because I didn't think that was  
9 absolutely necessary.

10 I mentioned earlier that in Pitt County the justice  
11 department had made us draw 68 percent district. I didn't  
12 think that we were that bad off in 2022, but I did think that  
13 a 47 percent BVAP in a district, as I look back on it now,  
14 would have guaranteed the citizens in that district, the Black  
15 voters in that district could elect their candidate of choice.

16 Q. Could we pull up Joint Exhibit 1. Senator, is this the  
17 map that was in place for the last election?

18 A. Yes.

19 Q. Is it the map that will be in place for the remainder of  
20 the decade unless a court orders otherwise?

21 A. It is.

22 Q. And looking at -- is there any chance any African  
23 American preferred candidate will win Senate District 1 in  
24 this map?

25 A. Not with the percentages that it's set at. And again,

## D. Blue - Redirect Examination

1 you notice at least in the earlier map, you had Halifax and  
2 Warren in the district.

3 Q. Is there any possibility an African American preferred  
4 candidate will win Senate District 2 in this map?

5 A. It's highly improbable. I can't speak absolutely because  
6 I can't see the future. It is highly improbable that an  
7 African American is going to win in either of these districts  
8 given the RPV in these districts.

9 Q. And in Exhibit 1 the eight majority-Black counties in  
10 northeastern North Carolina are divided into four different  
11 districts, correct?

12 A. Into four as opposed to starting with two and then three,  
13 starting with three and then four, yes.

14 Q. Would you call that cracking?

15 A. I call that cracking because you can draw a district now  
16 that's compact, it meets all the criteria of Section 2 and all  
17 of the factors in Gingles. So that's why I think that you  
18 could win it, as I proposed it. But you can't win it in this  
19 configuration and you're going from three African Americans  
20 representing those districts in the northeast down to one in a  
21 district that's in an urban area that's radically changing.

22 MR. SPEAS: Thank you, Senator.

23 THE COURT: Anything else?

24 MS. RIGGINS: No.

25 THE COURT: Thank you, Senator. Please watch your

## R. Reives - Direct Examination

1 step stepping down. There's a step up as you come off the  
2 witness stand and a step down through the gate.

3 MR. SPEAS: Your Honor, I would -- the joint  
4 exhibits that the senator testified are already admitted, but  
5 I would like to move the admission of Plaintiffs' Exhibit No.  
6 179 which is the Southern Coalition report. We do not offer  
7 it for the --

8 THE COURT: It'll be received with my ruling.

9 (Plaintiffs' Exhibit No. 179 was admitted into evidence.)

10 MR. SPEAS: I would also offer Legislative  
11 Defendants' Exhibits 1, 2, 3, and 4.

12 THE COURT: They'll be received.

13 (Legislative Defendants' Exhibit Nos. 1, 2, 3, and 4 were  
14 admitted into evidence.)

15 THE COURT: The Plaintiffs may call their next  
16 witness.

17 MS. MACKIE: Your Honor, the Plaintiffs call Robert  
18 Reives.

19 ROBERT REIVES, II

20 having been duly sworn, testified as follows:

21 THE COURT: Good afternoon.

22 THE WITNESS: Good afternoon.

23 THE COURT: You may examine the witness.

24 DIRECT EXAMINATION

25 BY MS. MACKIE:

## R. Reives - Direct Examination

1 Q. Good afternoon, Representative Reives. Can you tell us a  
2 little bit about your background.

3 A. Yes. I was born in Sanford, North Carolina, went to  
4 public school, K through 12 and ended up going to the  
5 University of North Carolina Chapel Hill for undergrad and law  
6 school. And after getting out of law school, came back home  
7 to being an assistant district attorney, did that for five  
8 years and been in private practice for the remaining 25 years.

9 Q. And you're a member of the General Assembly?

10 A. Yes, I am.

11 Q. And tell us a little bit about your electoral history.

12 A. I was appointed January of 2014 after the sitting member  
13 had stepped down, ran for election that year, won a primary,  
14 won the general election. I've been elected I guess five more  
15 times since then.

16 Q. Let's talk a little bit about your experience campaigning  
17 for the General Assembly. Have you had opponents at each  
18 election?

19 A. Yes.

20 Q. And have your opponents' campaigns against you included  
21 any implicit or explicit racial appeals?

22 A. Yes. There were some implicit racial appeals earlier and  
23 then when my district got redrawn in '22 I think they got a  
24 little more explicit.

25 Q. Can you tell us about those?

## R. Reives - Direct Examination

1 A. Yes. In '22, we went from having about a 14-point  
2 Democratic district to a one-point Democratic district so it  
3 was more competitive, as we put it. So because it was  
4 competitive, a lot more money got spent. We had a lot more  
5 mailers, a lot more commercials. So two of the mailers in  
6 particular I found rather offensive.

7 Q. And can you describe those mailers to the Court?

8 A. Yes. The first one was more of an implicit racial bias.  
9 It was what I would call a dog whistle. So what it was there  
10 was a -- the mailer had to go -- it was a series of mailers  
11 that continued to talk about when we were trying to raise per  
12 diem for legislators, so what was interesting about it  
13 because, of course, being at that time I was head of the  
14 caucus so I had a chance to see everybody's mailers that were  
15 getting sent against them. And so what was interesting is my  
16 mailer in particular even though we had hit -- they had hit  
17 several different Democrats on this bill, had me and my family  
18 in a vehicle not only I did not own but could not afford, we  
19 were riding in a parade. Had me, the family, we were in our  
20 Sunday best. My wife had a jacket that if you look briefly at  
21 that looked like it was a fur coat, wasn't really a fur coat,  
22 but that would be the appearance. So it was -- it had a very  
23 clear message in my mind, and I think if you talk to a lot of  
24 Black professionals they know about this type of situation,  
25 especially when you stay in a rural area.

## R. Reives - Direct Examination

1       When you're in a rural area, one of the things you  
2 understand you got to do is not be showy because, you know,  
3 there can be a lot of tensions with neighbors, with friends,  
4 things of that sort if you look like you got more money, got  
5 more property, anything of that sort, and I think that's why  
6 that picture was chosen. There are a million pictures of us  
7 in different other areas, in vehicles we actually own, in  
8 clothes that we normally wear. Those weren't used, but that  
9 was used in this particular case and that was frustrating.

10       The next one was much more explicit.

11 Q.    Can I ask you a question about that one? What kind of  
12 car were you featured in?

13 A.    It was a Mercedes. It belonged to -- I believe that  
14 Mercedes either belonged to one of the car lots or belonged to  
15 one of our friends that had the vehicle, but it was a vehicle,  
16 looked like a convertible Mercedes brand-spanking new.

17 Q.    What kind of car do you actually drive?

18 A.    2018 Honda Accord hybrid. Not quite sexy, but it's  
19 efficient.

20 Q.    And what exactly was it about that that to you suggested  
21 it was an appeal to race in that mailer?

22 A.    Well, again, because it's just something we grown up  
23 with. If you're a Black professional especially there's  
24 always a latent tension especially if you grow up in a rural  
25 area. And the tension is that if you're kind of on the same

## R. Reives - Direct Examination

1 level economically everybody's fine and I think you can get  
2 along well.

3 I think when you start to look like you're somewhere that  
4 somebody wouldn't expect you to be, doing something you would  
5 not normally be expected to do or having economic success that  
6 you would not be expected to have there's that belief that it  
7 comes from, you know, something that you were given.

8 When I was growing up, affirmative action was a big deal.  
9 Even had to deal with that in law school, people felt like you  
10 weren't there because you had a 4.0; you were there because  
11 they had to let somebody look like you in. And it's the same  
12 thing with wealth. It's just a reality. It's not something  
13 that you talk about a lot, but it's very understood. I know  
14 that in the people that I've grown up with it's something we  
15 discuss all the time because it just causes a lot of tension.

16 You even see that -- I've heard those discussions even  
17 since I've been on the House floor of those type of tensions  
18 if there is economic success, then it must be economic success  
19 because of some program or something that you've been given,  
20 and it's frustrating especially when you work hard for what  
21 you get, but it's a reality.

22 And the other reason is -- and I laugh because, you know,  
23 the thing is political people talk to each other and we also  
24 can look and you could look at the theme of the mailers and  
25 see that was a prevalent theme of those mailers. You know,

## R. Reives - Direct Examination

1 again, it wasn't me in a Polo, it wasn't me in jeans, it  
2 wasn't me in normal dress like you normally would see me  
3 outside of the courtroom or outside of the Legislature, but it  
4 was a very intentional mailer. Because, again, when you look  
5 at the other mailers for the other Democrats that were being  
6 hit, they didn't have this --

7 Q. For White Democrats?

8 A. Yes. You know, it was just a simple mailer, might even  
9 be a cartoon but it wasn't an actual picture of the family.  
10 And, yes, it was upsetting that my family was on it.

11 Q. And I interrupted you. What was the other mailer?

12 A. The second mailer was more explicit and that was more  
13 disturbing. My wife's cousin is a Ph.D. doctor, she and her  
14 husband, they had been educators for years and so they had  
15 opened a nonprofit. And at the time that I was being attacked  
16 for on the mailer is I had given them some money. What they  
17 were doing -- they are in Durham, so they were providing  
18 lunches and meals for kids that normally would depend on free  
19 lunch in school but since it was summer they didn't have  
20 school as an access, so a lot of us had donated money so they  
21 would be able to give those kids money. And that couldn't get  
22 more innocent.

23 But then, of course, as their nonprofit grew, what the  
24 nonprofit grew into is a really successful nonprofit that  
25 teaches antiracism education. And antiracism education is



1 kind of a particular field, but it's something where they get  
2 engaged all over the state. In fact, it's getting to be  
3 multiple states at this point in time to have these kind of  
4 conversations to try to help people overcome a racial bias  
5 that they may have. You know, both sides, whether you're  
6 Black, White, anything like that, but just antiracist in  
7 education.

8 So the mailer called them, like, I think it was like a  
9 terrorist organization and attacked them on me, you know,  
10 supporting a terrorist organization that taught these kind of  
11 issues. The things like Critical Race was the buzzword of  
12 that year.

13 And so it was really upsetting. And I remember it so  
14 distinctly because it upset her badly. Now, she cried. She  
15 had -- part of the reason she created that is because of some  
16 pretty serious racial incidents that happened when she was in  
17 high school, and so she was doing something she felt was  
18 positive and then getting attacked for it was rough.

19 And, again, I remember it was actually in an "O" article  
20 where the then Speaker of the House even talked about her  
21 organization in those terms, so it was clear what that was  
22 meant to do.

23 Q. And this was your wife's cousin --

24 A. Yes.

25 Q. -- is that right?

## R. Reives - Direct Examination

1 A. Yes. Her first cousin.

2 Q. Is she Black or White?

3 A. Black.

4 Q. Can you talk a little bit about your role in the General  
5 Assembly?

6 A. I've been leader of the Democratic caucus. This is my  
7 third term being leader. Before that I spent two terms as  
8 deputy leader. Before that was freshman leader and in between  
9 I took over a targeting process where we look at districts  
10 that try to decide what districts would be best for us to  
11 invest in. And, of course, you look at tons of factors there,  
12 but that's something I've been doing since 2015.

13 Q. And based on your involvement in elections, yours, others  
14 in that targeting role, do you think that race is a defining  
15 factor in the way people cast their ballots?

16 A. Yes.

17 Q. Why do you say that?

18 A. Well, you can see it because you look at all kinds of  
19 data, statistics, preelection, post-election. And when you  
20 start to notice the patterns, you'll see in certain areas  
21 where Black candidates run well behind, White Democrats  
22 further up the ticket or even down the ticket in those areas  
23 and you just start to note the voting and how the voting is  
24 going. You see it more markedly, I would say, in rural areas  
25 like mine, but you see it all over the state.

## R. Reives - Direct Examination

1 Q. So in your mind it varies across the state, but you see  
2 it all over?

3 A. Yes.

4 Q. And what exactly are you seeing when you're talking about  
5 the impact of race?

6 A. What you'll see is that the race of the voter seems to be  
7 the number one identifying factor in a lot of places about how  
8 they decide to vote. So, for instance, all of your Black  
9 voters will vote for a particular candidate; all your White  
10 voters might be voting for a particular candidate, and it  
11 seems like race is one of the factors that really goes in  
12 pretty heavily.

13 Q. Did you see that contribute to election losses of House  
14 members in 2024?

15 A. Oh, in '24, I'm trying to think of who we lost in '24.  
16 It was marked, but I think I saw it more in '22, yeah.

17 '22 was pretty heavy. When we went through that round of  
18 redistricting, I think we had 9 of 11 seats that got harder,  
19 were minorities, and then we had three in particular I think  
20 of. You had Howard Hunter that was in the northeast. You had  
21 Linda Cooper-Suggs and James Gailliard. And all those were  
22 three sitting incumbents with pretty impressive resumes,  
23 especially compared to the people that were running against  
24 them at the time and all three ran behind the White candidates  
25 that were further up the ticket and all three lost and it

## R. Reives - Direct Examination

1 seemed pretty consistent that that race was a factor.

2 And, in fact, a fourth candidate, Terry Garrison, who  
3 lost, I think is a perfect example because then we ran a White  
4 candidate in a harder district at the time, a less Democratic  
5 district in '24 and a White candidate was able to win as a  
6 newcomer against an incumbent as opposed to Terry Garrison who  
7 had been a -- I think Terry had been on the County Commission  
8 for about 20 years, served in the House about 10 years and so,  
9 you know, Terry wasn't able to win that district when it was a  
10 more Democratic district.

11 Q. And what district is that, the Garrison --

12 A. I think it was Granville/Vance is what it's made up of.  
13 The counties have remained the same, just the precincts  
14 changed up a little bit.

15 Q. In 2024 who was the candidate elected?

16 A. Bryan Cohn.

17 Q. And your -- I think you said that you thought the 2024  
18 district was a harder district?

19 A. Oh, yes. It was a much more Republican district and --  
20 but he was able to pull it off, and I do think race was a  
21 factor in. It was definitely something we were conscious of  
22 when we were recruiting.

23 Q. In those other races that you mentioned, the Howard  
24 Hunter and Linda Cooper-Suggs --

25 A. Yes.

## R. Reives - Direct Examination

1 Q. -- what area of the state were those districts in?

2 A. Linda Cooper-Suggs, Wilson; Howard Hunter, I know  
3 Pasquotank was one of those counties; and then James Gailliard  
4 was Nash County.

5 Q. And you mentioned recruitment of candidates. Can you  
6 talk a little bit more about how the role of race in voting  
7 impacts recruitment of candidates?

8 A. Yes. I think you've got to look at certain areas and  
9 you've got to understand that you're probably not going to win  
10 with an African American candidate as opposed to White  
11 candidates. So it's not a circumstance where you look at the  
12 district and say we can't win that district, but that you have  
13 to consider race in running in those districts.

14 Q. And why is that?

15 A. Because, again, it looks like voting is racially  
16 polarized, especially in North Carolina and so you've got to  
17 just take that into account. It's just a factor like any  
18 other factor that you've got to be realistic about.

19 Q. Representative Reives, do you have an understanding of  
20 the policies that Black voters tend to support?

21 A. Yes.

22 Q. What are some of those policies?

23 A. They're generally going to be policies that are -- that  
24 make people more upwardly mobile and so they're policies that  
25 really cross all racial lines but are more focused in the

## R. Reives - Direct Examination

1 Black community.

2 So, for instance, you look at public education is huge.  
3 Healthcare. Economic development. Workforce development.  
4 Safety. Those are the kind of issues that are just preeminent  
5 in Black voters' minds.

6 Q. Can we pull up Plaintiffs' Exhibit No. 223.

7 Representative Reives, this is the current NC Democratic Party  
8 platform. Have you seen this before?

9 A. Yes.

10 Q. And are you familiar with it?

11 A. Familiar enough.

12 Q. Are there parts of this platform that you know of that  
13 resonate with Black voters?

14 A. Yes. I have to look because I know that there's a --  
15 obviously a big discussion of education.

16 Q. I can help you or I can hand you a hard copy of that if  
17 it's easier, or if the Court has a preference?

18 THE COURT: I don't have a preference. Whatever the  
19 witness wants.

20 THE WITNESS: Yes. I'd have to have the whole  
21 document. This that I'm seeing right now is the first page of  
22 it.

23 MS. MACKIE: Your Honor, may I approach?

24 THE COURT: You may.

25 THE WITNESS: Thank you.

## R. Reives - Direct Examination

1           And one of the first things you see obviously is  
2 civil rights discrimination would be issues that would be  
3 important to Black voters. Judicial selection is mentioned,  
4 that would definitely be important.

5 BY MS. MACKIE:

6 Q.    If I can point you to page 8.

7 A.    Voting rights.

8 Q.    Is that an issue that Black voters care about?

9 A.    Absolutely. And I guess -- I think in particular with me  
10 I think about the fact that by the time my father hit 18 he  
11 wasn't allowed to vote, so you know, I would have been the  
12 first generation of my family that at 18 could go register to  
13 vote. So those things are very important because whoever is  
14 representing you is going to -- whatever their interests are,  
15 are going to be your interests.

16       And I know this talks about education. I'd just say this  
17 is a pretty long platform.

18 Q.    I may be able to help you out. On page 30, 29 to 30,  
19 there are some points about education. If you can look at  
20 those.

21 A.    Yes. And it talks about school safety, school-based  
22 healthcare, private school vouchers and charters, teachers.  
23 And that is something that really resonates with Black voters  
24 because the majority of the Black population no matter what  
25 kind of economic success they have, either because of where

## R. Reives - Direct Examination

1 they live, being rural areas like mine or either because of  
2 just their economic circumstances, private schools just aren't  
3 a real option even with vouchers. The vouchers generally  
4 don't cover the entire tuition.

5 For instance, we've got a very preeminent private school  
6 that's a couple of counties down from me and I've got some  
7 friends that work there and they talk about the fact that once  
8 those vouchers went into place, it really didn't change  
9 anything for students because the school raised tuition. And,  
10 in fact, because of the raise in tuition that even the voucher  
11 expansion caused a lot of these students to have to go back  
12 into public school because they just couldn't afford it.

13 And those are real issues because if you can't get a  
14 basic -- a good, sound K through 12 education, just not going  
15 to be able to make it, especially today.

16 Q. Thank you.

17 Representative Reives, why do you think Black voters tend  
18 to overwhelming support the Democratic Party in North  
19 Carolina?

20 A. I think at this time just because of the generally stated  
21 platforms of the candidates. It is -- Black voters are at a  
22 position right now again where they want to be at the  
23 forefront or want it for it to be at the forefront for the  
24 candidates that are voting for those issues that are important  
25 to them.



## R. Reives - Direct Examination

1       So public education is a huge issue and that  
2 unfortunately has become a partisan issue, and so you tend to  
3 see more Democratic candidates pushing for more public  
4 education support in dollars.

5       Safety is actually becoming an interestingly partisan  
6 issue because it is a huge thing with African Americans to  
7 make sure that they're safe in their communities that support  
8 it and they want it, but the way we get to that safety has  
9 become a very partisan issue, and so Democratic candidates  
10 tend to be more about trying to get communities together, to  
11 work together better, you know, understanding there's  
12 differences, so that's an issue.

13       Healthcare is a monumental issue. You know, that the age  
14 of death, average age of death for African American --  
15 especially African American males is either stagnated or  
16 decreased in some areas and we've got to figure out why, what  
17 factors are going into that. And there are some things that  
18 are particular to African Americans. So that kind of support  
19 is something that you see more with Democratic candidates as  
20 being in the forefront of what they advocate for.

21       Then economic development and workforce development are  
22 huge issues because you got a lot of African Americans who are  
23 still first and second generation -- I guess people being able  
24 to really be able to go as far as they want to go  
25 professionally, and so there's not a lot of wealth in Black

## R. Reives - Direct Examination

1 communities. You have people who are making a good living,  
2 but there's a big difference for wealth. Wealth is being able  
3 to acquire assets over generations and build that up, and you  
4 don't have a lot of that in African American communities. So  
5 therefore, they want more opportunities for economic  
6 development, more opportunities to get better jobs to help  
7 them achieve wealth.

8 So those are all big issues, and those are issues that  
9 you tend to hear Democratic candidates talk about more.

10 Q. Could the Republican Party be the party of choice for  
11 Black voters?

12 A. Oh, absolutely. Especially now because the reality is  
13 you would want to be able to be where folks are in power that  
14 have those opportunities. It's really just advocating for  
15 those issues. And again, that is a choice about which issues  
16 to advocate for, which issues are more important and which  
17 voters you're trying your best to appeal to.

18 Q. Representative Reives, has the General Assembly been  
19 responsive to the healthcare needs of the Black citizens of  
20 North Carolina?

21 A. No, not in my mind. You know, we finally passed Medicaid  
22 expansion, but we passed it 10 years late.

23 One of the things that stuck in my mind, for instance, is  
24 closing the Office of Minority Health, you know, something  
25 that you really -- wasn't taking up a whole lot of money,

## R. Reives - Cross-Examination

1 wasn't a big issue, but it was something that helped focus on  
2 some of the issues that I just talked to you about. For  
3 instance, you know hypertension, you know sickle cell anemia.  
4 These type of things are more prevalent in Black communities.  
5 Certain type of cancers are more prevalent in Black  
6 communities. And so having an office that kind of kept its  
7 focus sharply on these type of issues was very helpful. You  
8 know, we still have a Health Disparities Office, but it  
9 doesn't focus on those type of issues and it's not built for  
10 that. That's not its mission statement.

11 Q. When you say it's not focused on those type of issues,  
12 what types of issues do you mean?

13 A. Issues that are particular to African Americans and their  
14 health journeys.

15 Q. In your opinion has the General Assembly been responsive  
16 to the educational needs of Black citizens in North Carolina?

17 A. No. I mean, you've got to invest in public education if  
18 you're going to be responsive to the needs of Black voters.  
19 There's just no if, ands, or buts about that. You just can't  
20 make up for that by hoping that they're going to go to private  
21 or charter schools.

22 MS. MACKIE: I don't have any other questions.  
23 Thank you, Representative.

24 THE COURT: Cross-examination.

25 CROSS-EXAMINATION

## R. Reives - Cross-Examination

1 BY MS. RIGGINS:

2 Q. Good afternoon, Representative Reives. It's nice to see  
3 you again.

4 A. Hi.

5 Q. Just to refresh your recollection, my name is Alyssa  
6 Riggins, and I have the privilege of representing the  
7 Legislative Defendants in this case.

8 Representative Reives, you told Ms. Mackie you've been  
9 elected to the house five times.

10 A. I think five. I'm in my seventh term, so I don't know  
11 how many times I've been elected.

12 Q. All right. To the best of your knowledge none of the  
13 districts that you've represented have a majority African  
14 American Voting Age Population, did they?

15 A. No.

16 Q. You consider your district to be primarily rural, don't  
17 you, Representative Reives?

18 A. Yes.

19 Q. And you were the house Democratic leader for the  
20 2023-2024 Legislative Session; is that right?

21 A. Yes.

22 Q. Do you recall there were 26 African American House  
23 members during the 2023-2024 session?

24 A. Yes.

25 Q. Do you have an understanding of how many African American

## R. Reives - Cross-Examination

1 House members there are for the 2025-2026 Legislative Session?

2 A. I believe we have 25.

3 Q. Do you understand that the North Carolina House clerk  
4 promulgates a public list of --

5 A. Yes, absolutely.

6 Q. Would it help refresh your recollection if I showed you  
7 the list that was published for this term?

8 A. Yes.

9 Q. Can we please pull up Legislative Defendants' Exhibit 72.  
10 Do you see this, Legislative Defendant 72, on your screen,  
11 Representative Reives?

12 A. Yes.

13 Q. Do you see that this was promulgated by the Office of the  
14 House Principal Clerk from the North Carolina General  
15 Assembly?

16 A. Yes.

17 Q. Do you see that there are 28 African American senators  
18 listed here?

19 A. Representatives, yes.

20 Q. Representatives, yes. Thank you. And one of those  
21 representatives is listed here as Dante Pittman; is that  
22 right?

23 A. Yes.

24 Q. Mr. Pittman was recently elected to House District 24; is  
25 that right?

## R. Reives - Cross-Examination

1 A. Yes.

2 Q. And he defeated a Republican incumbent in that district;  
3 is that right?

4 A. Yes.

5 Q. And House District 24 is primarily made up of Wilson  
6 County; is that right?

7 A. Yes.

8 Q. Was that Representative Cooper-Suggs' district?

9 A. Yes, it was.

10 Q. Speaking of Representative Cooper-Suggs, do you know how  
11 many times she was elected to the North Carolina House?

12 A. I believe -- that's a good question. I know she's got  
13 one -- I believe she came in, in '18, but she may have come in  
14 in '20, so it may have only been once.

15 Q. Do you recall that Representative Farmer-Butterfield  
16 retired after the 2018 election?

17 A. Yes.

18 Q. And do you recall that Representative Cooper-Suggs was  
19 appointed to fill her seat?

20 A. That was it, yes.

21 Q. So Representative Cooper-Suggs only won a single  
22 election?

23 A. That's correct.

24 Q. And then she was defeated by I believe it was  
25 Representative Fontenot, am I saying that correctly?

## R. Reives - Cross-Examination

- 1 A. Fontenot, yes.
- 2 Q. Then he was defeated by Mr. Pittman; is that right?
- 3 A. Yes.
- 4 Q. And Representative Pittman is a Black Democrat?
- 5 A. I guess by legal definition he would be. And the reason
- 6 I say that -- I'm not trying to be difficult -- Dante is half
- 7 White and half Black and he was raised by a White family, so I
- 8 haven't really thought about that question until you brought
- 9 it up. But, however, we would identify him however he
- 10 identifies is how he identifies.
- 11 Q. Can we pull up Legislative defendants' Exhibit 72 again.
- 12 Do you understand, Representative Reives, that this list is
- 13 based on answers given by House members for how they identify?
- 14 A. That's what I'm saying. I do not know so I will take
- 15 that as accurate.
- 16 Q. All right. Do you see that Representative Pittman is
- 17 listed in the third column under the 28 Black or African
- 18 American?
- 19 A. Yes.
- 20 Q. I believe you mentioned earlier that Terry Garrison lost
- 21 an election.
- 22 A. He did.
- 23 Q. Was that in 2022?
- 24 A. Yes.
- 25 Q. Do you recall anything different about Representative

## R. Reives - Cross-Examination

1 Garrison's election in that campaign?

2 A. Anything different from?

3 Q. Anything that was particularly newsworthy in that  
4 campaign.

5 A. Not right off. I'm trying to think back. I know one of  
6 the ads run against him was about a dismissed domestic  
7 violence charge.

8 Q. So you have a recollection that previous charges and  
9 convictions against former Representative Garrison were an  
10 issue in the 2022 campaign?

11 A. Well, no. I know he wasn't convicted of anything, but I  
12 know there was a previous charge that was dismissed.

13 Q. What about back child support that was not paid; do you  
14 recall that being an issue in the 2022 election?

15 A. Right. I don't know that he ever had a criminal  
16 conviction. And I'm taking your word for it on this. I  
17 actually have no memory of him having a child support issue,  
18 but if he did, I would think it would be a civil child support  
19 claim against him; not a criminal. But I really don't  
20 remember anything about that. I remember the dismissed  
21 assault charge.

22 Q. But you do recall that there were discussions of domestic  
23 violence with Representative --

24 A. Yes, yes.

25 Q. All right. In the 2024 election Democrat Bryan Cohn won



## R. Reives - Cross-Examination

1 that election; is that right?

2 A. Yes.

3 Q. All right. And I believe you covered this with Ms.

4 Mackie earlier, but do you consider Democrats to generally be  
5 the candidate of choice for Black voters in North Carolina?

6 A. I think that that has tended to be the case over the last  
7 few years, yes.

8 Q. You've been a member of the House Redistricting Committee  
9 since 2019; is that right, Representative Reives?

10 A. Yes, ma'am.

11 Q. All right. And you would agree with me that you've  
12 become pretty vocal about concerns about political  
13 gerrymandering?

14 A. Yes.

15 Q. Would you also agree with me that there's political  
16 polarization in North Carolina, Representative Reives?

17 A. Yes.

18 Q. All right. And would you also agree with me that  
19 political polarization has increased in North Carolina in the  
20 last 20 years?

21 A. Yes.

22 Q. Do you recall being notified by then House Redistricting  
23 Chairman Destin Hall that there was a room available for the  
24 Democratic caucus members to use in the 2023 redistricting  
25 cycle?

## R. Reives - Cross-Examination

1 A. Yes.

2 Q. All right. Do you also recall that Chairman Hall offered  
3 you additional resources to hire outside groups to engage in  
4 redistricting if you wanted it?

5 A. Yes.

6 Q. You do recall that. Okay.

7 And you did not ask Chairman Hall for any additional  
8 funds for you or your caucus to engage in redistricting; is  
9 that right?

10 A. That's correct.

11 Q. But your caucus engaged Stephen Mallinson to draw maps on  
12 its behalf; isn't that right?

13 A. I don't remember us drawing any maps with Stephen. I  
14 know that Stephen may have looked at maps that we had drawn,  
15 but I don't recall Stephen ever doing anything with drawing  
16 maps from us. I don't know that we actually drew any maps. I  
17 knew we drew some amendments.

18 Q. Sure. Do you recall if Mr. Mallinson was involved in  
19 drawing the amendments that you just mentioned?

20 A. Not the amendments with me.

21 Q. Okay. But you did not ask then Chairman Hall, now  
22 Speaker Hall, for any additional funds to engage?

23 A. No, we did not.

24 Q. So do you have any idea who paid Mr. Mallinson?

25 A. No.

## R. Reives - Cross-Examination

1 Q. During the 2023 map drawing process, you voiced concerns  
2 over some changes that were made to your district; is that  
3 right, Representative Reives?

4 A. Yes.

5 Q. And all of those concerns were addressed after you raised  
6 them in the final plan; is that right?

7 A. I think that my concerns were lessened.

8 Q. And Representative Reives, you believe, don't you, that  
9 east of I-95 that minorities do not need to live in a district  
10 that is more than 50 percent Black Voting Age Population in  
11 order to elect their candidate of choice; is that right?

12 A. That's right.

13 MS. RIGGINS: We have no further questions, Your  
14 Honor.

15 THE COURT: Thank you. Anything else?

16 MS. MACKIE: Nothing further, Your Honor. We would  
17 just move the admission of Plaintiffs' Exhibit No. 223.

18 THE COURT: It'll be received.

19 (Plaintiffs' Exhibit No. 233 was admitted into evidence.)

20 THE COURT: Watch your step. There's a step down as  
21 you come off the witness stand and a step down through the  
22 gate.

23 The Plaintiffs may call their next witness.

24 MS. THEODORE: Plaintiffs call Dr. Jonathan  
25 Mattingly.

## J. Mattingly - Direct Examination

1 JONATHAN MATTINGLY,

2 having been duly sworn, testified as follows:

3 THE COURT: Good afternoon, Doctor. You may examine  
4 the witness.

5 MS. THEODORE: Your Honor, I'd just like to move the  
6 admission of some exhibits with the defendant's consent.

7 THE COURT: Okay.

8 MS. THEODORE: That's Plaintiffs' Exhibit No. 1,  
9 Plaintiffs' Exhibit No. 2, Plaintiffs' Exhibit No. 19,  
10 Plaintiffs' Exhibit No. 20, Plaintiffs' Exhibit No. 114, which  
11 is Dr. Mattingly's rebuttal report so that would be subject to  
12 your Demonstrative District E ruling, and Legislative  
13 Defendants' Exhibit 47.

14 THE COURT: They'll be received.

15 (Plaintiffs' Exhibits Nos. 1, 2, 19, 20, and 114 were  
16 admitted into evidence.)

17 (Legislative Defendants' Exhibit No. 47 was admitted into  
18 evidence.)

19 DIRECT EXAMINATION

20 BY MS. THEODORE:

21 Q. Good afternoon, Dr. Mattingly. How are you currently  
22 employed, Dr. Mattingly?

23 A. I'm employed at Duke University as a professor of  
24 mathematics and of statistical science.

25 Q. How long have you been at Duke?

1 A. I've been at Duke since 2003.

2 Q. Were you previously Chair of the Math Department at Duke?

3 A. Yes. Roughly from 2015 to 2020.

4 Q. Did you grow up in North Carolina?

5 A. Yes. I grew up in Charlotte and went to high school in  
6 Durham.

7 Q. Where did you earn your economic degrees?

8 A. I have a Bachelor of Science in physics -- I mean in  
9 applied mathematics with a concentration in physics from Yale  
10 University, a Ph.D. in applied and computational mathematics  
11 from Princeton University, and I did postdoctoral time at  
12 Stanford University.

13 Q. What are your general fields of economic expertise?

14 A. Applied mathematics, probability, computational  
15 mathematics.

16 Q. Have you testified as an expert before in redistricting  
17 cases?

18 A. I have, a number of times.

19 Q. And have courts credited your testimony in those cases?

20 A. Yes, in each case.

21 Q. Can we pull up Plaintiffs' Exhibit No. 2.

22 Is this a true and accurate copy of your CV, including  
23 your publications and academic positions?

24 A. Yes, I believe.

25 MS. THEODORE: All right. At this time Plaintiffs

1 tender Dr. Mattingly as an expert in the fields of applied and  
2 computational mathematics.

3 THE COURT: Received.

4 BY MS. THEODORE:

5 Q. What are you here to testify about today at a high level?

6 A. I'm here to testify about a piece of software that my  
7 research group developed to implement the procedures that were  
8 laid out in the Stephenson court ruling.

9 Q. And what did plaintiffs ask you to do with that software?

10 A. They asked me to take a number of Demonstration Districts  
11 as districts that satisfied the VRA or other federal  
12 requirements and then apply the Stephenson procedures to the  
13 remainder of the state after removing those Demonstration  
14 Districts.

15 Q. Can you briefly describe what Stephenson is?

16 A. Stephenson is a ruling by the -- by the State Supreme  
17 Court that tries to balance the -- did I get that wrong? That  
18 tries to balance the federal requirements for one person one  
19 vote and the Voting Rights Act and the state's desire to keep  
20 counties whole.

21 Q. And does Stephenson outline a particular procedure for  
22 doing that?

23 A. Yeah, it does. It -- it outlines -- the easiest way to  
24 explain is just to kind of step through it. So what it says  
25 is first you should consider the Voting Rights Act and remove

1 any districts that are needed to satisfy the Voting Rights  
2 Act, then you should take the remainder of the state and you  
3 should look at each individual county. So Stephenson at the  
4 highest level produces a group of county clusters, so that's  
5 our goal.

6 So you start off by taking the individual counties and  
7 you look at each individual county and you ask: Could that  
8 county be a district unto itself or could it be a whole number  
9 of districts? If it can, you remove it and place it aside.  
10 And then you look at all pairs of adjacent counties and you  
11 ask could those counties be a district or a whole number of  
12 districts and remove them and then they go on to all triples  
13 and quadruples and so on.

14 Q. If you don't mind slowing down a little bit, Dr.  
15 Mattingly.

16 THE COURT: So would the court reporter, I'm sure.

17 THE WITNESS: Please just tell me. I always talk  
18 fast. I'm sorry.

19 BY MS. THEODORE

20 Q. And when the Stephenson procedure is making those  
21 decisions about grouping counties, is that based on the  
22 population?

23 A. Yes, it is.

24 Q. So can you tell the Court a little bit more about your  
25 development of a mathematical algorithm to implement

1 Stephenson?

2 A. Sure. Through my other redistricting work, I became  
3 aware of this concept of the county clusters and also became  
4 aware of the fact that there was no, kind of, transparent way  
5 to implement the Stephenson procedure, and so I thought it  
6 would be a good public service and kind of in the interest of  
7 transparency to produce a piece of software which we then  
8 release publicly so that all interested parties could use.

9 Q. Is that sort of a complex or easy computational problem  
10 to implement that procedure?

11 A. You have to be a little careful. I mean, it's a huge  
12 space you're searching, all these possible clumps of counties.  
13 If you start doing it by hand, I think you would find that  
14 it's a bit daunting. It's useful to have a computer program  
15 that makes smart decisions about how to proceed forward.

16 Q. Did you publish that algorithm in an article about that  
17 algorithm in a peer-reviewed journal?

18 A. We did. We published the paper describing all the work  
19 in a peer-reviewed journal, then we made a public repository  
20 so that anyone could download the code and use it.

21 Q. Is that article the peer-reviewed article at Legislative  
22 Defendants' Exhibit 47?

23 A. Yes, it is.

24 Q. Okay. After the 2020 Census, did you apply your  
25 algorithm to identify county clustering options for the North



1 Carolina Legislature that complied with Stephenson?

2 A. Yes, we did.

3 Q. And did you write a paper describing those options?

4 A. We did.

5 Q. Okay. And that's at Joint Exhibit 115?

6 A. Yes. Let me look. Yes, that's it.

7 Q. Is it your understanding that the legislature relied on  
8 the clustering options in your papers to develop county  
9 clusters for the State House and Senate for the 2020 cycle?

10 A. Yes, that's my understanding.

11 Q. Did your paper take account of the Voting Rights Act  
12 aspect -- I'm sorry. I'll start again.

13 Did your paper take account of the Voting Rights Act  
14 aspect of Stephenson?

15 A. No, it did not. We very explicitly even stated on the  
16 paper. We just -- we started from -- we didn't want to  
17 presume what the state would choose or if the state would  
18 choose, and so we just did it without taking into account the  
19 Voting Rights Act.

20 Q. If the legislature back when they were redistricting in  
21 2021 had decided that creating a VRA district was necessary,  
22 could they still have used your algorithm at that time in 2021  
23 to apply Stephenson?

24 A. Yes, absolutely. The algorithm, it was possible to use  
25 the algorithm after removing a subset of the state. In fact,

1 in 2023, as you start thinking more about the next round of  
2 redistricting, we even modified the algorithm to -- not the  
3 algorithm, but the software around it to make it easier to do  
4 that with the algorithm and released that publicly.

5 THE COURT: We're going to take a 15-minute recess.

6 (The proceedings were recessed at 2:45 p.m. and reconvened  
7 at 3:00 p.m.)

8 THE COURT: You may continue the direct examination.

9 BY MS. THEODORE:

10 Q. All right. Thank you. I'm just going to back up to one  
11 or two questions.

12 Dr. Mattingly, you testified that you noted in your paper  
13 that you did not take account of the Voting Rights Act when  
14 you were creating the Stephenson clusters after the 2020  
15 Census.

16 Why didn't you take account of the VRA when you produced  
17 those clustering options back in 2021?

18 A. Because that's not our expertise to decide whether the  
19 Voting Rights Act should or not should not be applied and what  
20 those clusters should -- what those districts should be, so we  
21 didn't know what to take out in advance.

22 Q. Okay. And the legislature in 2021, if they had wanted to  
23 create a Voting Rights Act district, could they have applied  
24 your algorithm in 2021 to cluster the rest of the state?

25 A. Yes, they could have.

1 Q. Okay. And you testified that you made some changes in  
2 2023. Could you talk a little bit more about that?

3 A. Yes. Those were just kind of cosmetic changes to the  
4 part around the main algorithm that made it more transparent  
5 how to exactly do that, but it was completely possible  
6 beforehand.

7 Q. When you say, "how to do that," you mean how to freeze a  
8 VRA district? You mean how to freeze a VRA district and then  
9 cluster the rest of the state?

10 A. Yes. That's what I mean.

11 Q. And those updates, were those made before the fall 2023  
12 redistricting effort that's at issue in this case?

13 A. Yes, they were. And they were released publicly also.

14 Q. All right. So let's turn to this case.

15 What did Plaintiffs' counsel ask you to do here?

16 A. They asked me to consider a number of Demonstration  
17 Districts as Voting Rights Act districts or that satisfied  
18 some federal requirements and then to remove those districts  
19 from consideration and then to apply the Stephenson algorithm  
20 to the remaining part of the state to see what the implied  
21 county clusters would be.

22 Q. Okay. And let's turn to Demonstration District A.

23 MS. THEODORE: And, Troy, if we can pull up the  
24 image on page 6 of Plaintiffs' Exhibit 1.

1 BY MS. THEODORE:

2 Q. Can you tell us what the map here, the top map here under  
3 Demonstration District A is showing?

4 A. So first of all, the colored regions are the county  
5 clusters we've been talking about. So if you look at a  
6 particular county cluster, let's say Mecklenburg County with I  
7 guess that's -- I didn't know that there was a pen there --  
8 Iredell above right where I drew that little yellow line by  
9 accident, that's a county cluster that has a number six in it  
10 and that number six refers to the fact that that county  
11 cluster should be subdivided into six legislative districts.

12 And this particular map, this is the one with  
13 Demonstration District A, I was asked to first freeze this  
14 light yellow district in the northeastern corner of the state  
15 and that's Demonstration District A that I froze, and then  
16 apply the algorithm to the rest of the state. And the  
17 resulting county clusters that we obtained are shown here,  
18 except for the ones that were not 100 percent determined.

19 Q. Did Plaintiffs' counsel also ask you to freeze the  
20 Pitt-Edgecombe district and assume that was federally required  
21 when you were doing the algorithm for District A?

22 A. Yes. I should have mentioned that. I apologize, yes.  
23 We also froze the Pitt-Edgecombe district which is the purple  
24 one just below the yellow one I just spoke of.

25 Q. Okay. And let's go to the bottom maps on this page 6 of

1 your report. Tell us what those are showing.

2 A. So these bottom pieces fit into the gray areas and the  
3 larger map we were just talking about. And so the Stephenson  
4 algorithm often specifies exactly what a county cluster has to  
5 be but it doesn't always. Sometimes there are choices left to  
6 the person implementing the algorithm and this -- these little  
7 inset diagrams show each of the choices.

8 So, for instance, in the far east of the state there is a  
9 choice of whether to use this orange and blue -- orange and  
10 green district down around Wilmington or this yellow and  
11 purple district and similarly these other two choices, and if  
12 you take it altogether there were a total of eight possible  
13 maps.

14 Q. When you were referring to the orange and green district  
15 and the yellow and purple district, did you mean to say  
16 cluster?

17 A. Cluster, yes. I meant to say cluster. I apologize.

18 Q. Okay. And so, for example, the orange and green cluster  
19 on the right would be an equally good way to sort of comply  
20 with Stephenson as the yellow and purple cluster on the left?

21 A. As far as Stephenson is concerned, they're both  
22 acceptable.

23 Q. Let's turn to page 2 of your rebuttal report which is  
24 Plaintiffs' Exhibit No. 114. Did you also analyze what  
25 clusters would result if you froze Demonstration District A

1 but you did not freeze Pitt and Edgecombe?

2 A. Yes. That's what this county clustering map is showing,  
3 it's showing the effect of only having the purple  
4 Demonstration District A and not freezing anything else.

5 Q. And that purple Demonstration District is the  
6 district sort of in the -- the purple district in the  
7 northeast with the number one inside of it?

8 A. Yeah. That starts at Vance and heads east of there.

9 Q. Let's pull up Joint Exhibit 115 and turn to pages 1 and  
10 2. Can you tell us what we're seeing on these two pages?

11 A. On the left-hand page you're seeing -- these are the  
12 county clusterings that we produced with the algorithm using  
13 the 2020 Census data without considering any Voting Rights Act  
14 information. On the left is all the county clusters that  
15 are -- that you have no choice about and on the right are the  
16 groupings of different choices you can make to fill in the  
17 gray parts of the state.

18 Q. Let's put PX114, page 2, side-by-side with Joint Exhibit  
19 115 page 1. So can you talk about what clusters change in  
20 comparison to the enacted map if you freeze Demonstration  
21 District A, you don't freeze Pitt-Edgecombe, and you run the  
22 Stephenson algorithm?

23 A. Yes. If you look on the left-hand side, that's what you  
24 just described with Demonstration District A without freezing  
25 Pitt-Edgecombe, what you see is the -- and if you're comparing

1 it to the map on the right, the only ones that are  
2 different -- thank you. So now we're looking at the top one,  
3 is the Demonstration District. So the only ones that change  
4 are this green district just below the Demonstration District  
5 A, which is shown in purple and this goldenrod one which is  
6 this district right below the purple. Each of those are the  
7 county are -- I mean, sorry. Let's say county clusters, but  
8 they are actually also districts because they have a one in  
9 them so they're A1 district county cluster and then also this  
10 kind of rust-colored district to the far right.

11 And it's worth noticing that other than those which are  
12 just the ones that adjoin this purple one below and to the  
13 right, nothing else in the map changes as far as the county  
14 clusterings are concerned. So you could district the  
15 remainder of the map exactly as it was districted in the 2020  
16 map.

17 Q. Okay. And just so the record is clear, the districts  
18 that you're talking about, the purple district is  
19 Demonstration District E -- A, I'm sorry, and the green  
20 cluster you're referring to with the three counties is  
21 Franklin, Nash, and Edgecombe; is that right?

22 A. That's correct, yes.

23 Q. And the orange cluster is the Pitt-Beaufort cluster?

24 A. Yes. Thank you.

25 Q. And so you -- so if you froze Demo District A and ran the

1 Stephenson clustering formula, the mapmaker would have no  
2 discretion with respect to how to draw those green and orange  
3 districts; is that right?

4 A. They're single-district county clusters and therefore  
5 they are just a district unto themselves already decided.

6 Q. And the mapmaker could draw the rest of the state in the  
7 same as the enacted map with the exception of that red  
8 district on the east?

9 A. That's correct. And in that one they would have just one  
10 line to draw it to create the two districts.

11 Q. Okay. Let's turn to Demonstration District C on page 9  
12 of your report. So can you walk us through what this image is  
13 showing for Demonstration District C?

14 A. Yes. So this image shows the result of a different  
15 Demonstration District, and that Demonstration District is a  
16 district that begins with Vance and heads across the top of  
17 the state in that rust-colored region in the northeast corner  
18 of the state just before the green district. And once you  
19 freeze those, this is the result that the Stephenson algorithm  
20 gives you. Again, with these grayed-out regions being regions  
21 where there's still choice left.

22 So it has the Demonstration District C in this  
23 rust-colored region and then there are two other districts  
24 which it doesn't specify, it just specifies they're in this  
25 same county cluster.



1 Q. Okay.

2 A. And I should emphasize that we did not freeze  
3 Pitt-Edgecombe here. This one did not have Pitt-Edgecombe  
4 frozen.

5 Q. And the rust-colored region you're describing has a three  
6 in it?

7 A. That's correct.

8 Q. And that includes Demonstration District C?

9 A. Yes.

10 Q. And then the two other districts in that rust-colored  
11 region, is the algorithm requiring the mapmaker to draw those  
12 in any particular way?

13 A. No.

14 Q. I think you mentioned this, but this map is showing a  
15 Pitt-Edgecombe cluster in purple. Did that just happen  
16 organically?

17 A. Yeah. That just happened -- the algorithm did that. It  
18 just happened organically, as you say. It was not cooked into  
19 it.

20 Q. Okay. Let's turn to Demonstration District D on page 10  
21 of your report.

22 Did you perform the same procedure in freezing  
23 Demonstration District D and then running the Stephenson  
24 algorithm?

25 A. Yes, I did. Demonstration District D, again, is in this

1 big, yellow county cluster which has a two in it, the  
2 northeastern corner.

3 Q. Okay. And did Demonstration District D involve any  
4 counties that were outside of current Senate Districts 1 or 2?

5 A. No, it did not.

6 Q. Okay. And so if Demonstration District D is treated as a  
7 VRA district, what's the result with respect to county  
8 clustering for the rest of this state?

9 A. The result relative to the 2020 map it's left exactly the  
10 same.

11 Q. No effect on any cluster outside of the yellow cluster  
12 that contains Districts 1 and 2?

13 A. Yes, that's what I meant to say. Thank you.

14 Q. Was that also true when you analyzed Demonstration  
15 District B?

16 A. Yes. The same is true for Demonstration District B.

17 Q. And did you freeze any district other than Demonstration  
18 District B and D when you were performing the analysis of  
19 those districts?

20 A. Sorry. I didn't quite follow your question.

21 Q. When you were analyzing Demonstration District B and D,  
22 did you freeze any other districts besides B and D  
23 respectively?

24 A. No, I didn't. Just to specify, Demonstration Districts  
25 were all that were frozen.

1 Q. Okay. Does applying the Stephenson procedure result in a  
2 map that has the lowest possible number of county splits?

3 A. No, it does not.

4 Q. And have you discussed this in any of your prior work?

5 A. Yes. In our published paper, in the mathematical, in the  
6 carefully published one, it's all laid out. We actually have  
7 a whole discussion about different ideas and minimization and  
8 how Stephenson doesn't give you the absolute minimum.

9 Q. And has anyone provided an empirical demonstration of  
10 this in North Carolina using the 2020 Census data?

11 A. Yes, they have. There was a research group in Oklahoma,  
12 at one of the universities in Oklahoma that took our work and  
13 then extended it and they developed an algorithm, which I  
14 should emphasize is not the same as the Stephenson algorithm.  
15 And using that algorithm, they produced a county clustering  
16 for North Carolina that had less county splits than the one  
17 that -- the Stephenson algorithm, in fact. So I think  
18 Stephenson algorithm in 2020, using the 2020 data and no VRA  
19 districts, produces 15 county splits and there they  
20 demonstrated a map with 13 county splits.

21 Q. And did their paper consider the VRA?

22 A. No, they did not.

23 Q. And are the clusters and the map with 13 county splits  
24 that the Oklahoma researchers produced at exhibits --  
25 Plaintiffs' Exhibits 19 and 20?

1 A. Yes. Yes, they are.

2 Q. Okay. Once the Stephenson procedure is applied, does a  
3 mapmaker have any control over how many counties to split  
4 across the map?

5 A. The Stephenson procedure produces a lower bound on the  
6 number of counties you can split. So it forces a certain  
7 number of county splits upon the mapmaker. The mapmaker might  
8 choose to split more, but maybe it's best explained by an  
9 example, if that's okay.

10 If I look at Rockingham-Guilford County, so those are  
11 those green counties in the middle of the state touching the  
12 Virginia border, the two green boxes with the number three in  
13 the center, so the Stephenson algorithm puts those two  
14 counties together in a county cluster And it says that you  
15 have to put three legislative districts in there. You might  
16 think that it would be possible to put one of the districts  
17 wholly in one of the counties and split only one of the  
18 counties in creating the other district, but that's  
19 impossible; we know that from the Stephenson algorithm,  
20 because if it is possible to do that it would have pulled off  
21 that single county as a single county cluster. And  
22 similarly -- so there has to be two county splits in that  
23 county cluster.

24 Similarly, if we look at the far western part of the  
25 state in the one that runs along the Tennessee border, that

1 yellow county cluster has three legislative districts in it,  
2 so we know there has to be at least two county splits.

3 Q. For the record, are we looking, Dr. Mattingly, at the  
4 picture of the clusters that you created for Demonstration  
5 District D of the last page of your report?

6 A. Yes, that's true. But I believe these examples are in  
7 all the maps that were produced.

8 Q. Okay. So if it's also true that you draw a VRA district  
9 and apply Stephenson, Stephenson would dictate the number of  
10 county splits across the map?

11 A. It gives a lower bound. Again, the mapmaker might choose  
12 for other reasons to split more counties.

13 Q. Okay.

14 A. County splits, I should say.

15 Q. Could the lower bound that Stephenson dictates be higher  
16 than the number of county splits that you could achieve if you  
17 started with a VRA district and were able to draw map for the  
18 rest of the state without having to comply with Stephenson?

19 A. Yes, I see no reason why it couldn't be.

20 MS. THEODORE: Your Honor, at this point I'd like to  
21 make our offer of proof under Federal Rule of Evidence 103  
22 about Demonstration District E, which I understand has been  
23 excluded.

24 We would proffer the portions of Plaintiffs' Exhibit  
25 114 which is Dr. Mattingly's rebuttal report that relate to

## J. Mattingly - Cross-Examination

1 Demonstration District E, and I'd also like to ask Dr.  
2 Mattingly a single question as part of our offer of proof to  
3 confirm that he would testify to what's in that report if it  
4 weren't for the exclusion.

5 THE COURT: You may.

6 MS. THEODORE: Thank you.

7 BY MS. THEODORE:

8 Q. Dr. Mattingly, if you were permitted, would you testify  
9 to the analysis and conclusions in your rebuttal report  
10 relating to Demonstration District E?

11 A. Yes, I would.

12 Q. Thank you.

13 MS. THEODORE: No more questions.

14 THE COURT: Cross-examination.

15 MS. McKNIGHT: Thank you, Your Honor.

## CROSS-EXAMINATION

16  
17 BY MS. MCKNIGHT:

18 Q. Good afternoon, Dr. Mattingly. It's nice to see you.

19 A. Good afternoon.

20 Q. I'm Kate McKnight. I have the privilege of representing  
21 Legislative Defendants here today. I'd like to start with  
22 some questions about the algorithm you used in this case.

23 In 2019 you and collaborators developed a mathematical  
24 algorithm to implement the county clustering rules in  
25 Stephenson versus Bartlett, right?

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1 A. Yes, to implement the part after VRA decisions were made,  
2 that's correct.

3 Q. And then in 2020 with those collaborators, you published  
4 a paper that applied that algorithm; isn't that right?

5 A. Could you just make sure I know what paper you're talking  
6 about.

7 Q. Sure. Let's bring up Legislative Defendants' Exhibit 47.  
8 Do you recognize this paper, Dr. Mattingly?

9 A. Yes, that's the paper we published. I agree with your  
10 question, yes.

11 Q. This was published with the Journal of Statistics and  
12 Public Policy?

13 A. That's correct.

14 Q. This is an academic journal; is that right?

15 A. Yes.

16 Q. Then in 2021, you submitted to the General Assembly a  
17 submission applying the algorithm to the 2020 Census data;  
18 isn't that right?

19 A. I don't think I submitted to the General Assembly. We  
20 posted it for public dissemination, for public consumption.

21 Q. I see. Thank you for clarifying that.

22 Let's pull up Joint Exhibit 115. Is this a 2021 paper we  
23 were just discussing that you posted publicly?

24 A. Yes. I should say I understand the General Assembly  
25 referred to it, so I guess they did get it.

## J. Mattingly - Cross-Examination

1 Q. I heard you testify a little earlier today that you  
2 understood the General Assembly relied on this publication; is  
3 that right?

4 A. I think in the record they talked about the Duke group's  
5 public county clusters if I recall correctly. I took that to  
6 be us.

7 Q. So we've talked about three dates here: 2019, 2020 when  
8 you published that paper in the academic journal, and now 2021  
9 when you published this application of the algorithm to 2020  
10 Census. On any of those dates, did you apply the algorithm in  
11 a way where you froze certain districts for Voting Rights Acts  
12 purposes, withdrew them and then applied Stephenson to the  
13 remaining areas of the map?

14 A. We discussed it, but we had no idea what those districts  
15 would be so we didn't do anything.

16 Q. And in fact, you assumed for the purposes of that 2020  
17 paper that no district was required to be drawn under the VRA,  
18 correct?

19 A. We stated that we did not know what those districts would  
20 be, so we did not use any Voting Rights districts.

21 Q. So on page 1 of your report in this matter, and we can  
22 bring it up, it's PX1, you stated, "We did not take account of  
23 the VRA and in effect assumed for purposes of that paper  
24 without analyzing the issue or making any conclusion that no  
25 district was required to be drawn under the Voting Rights



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1 Act."

2 Do you see that?

3 A. Which paragraph is that?

4 Q. Sure. It's the second full paragraph about midway down  
5 and it's a parenthetical.

6 A. Yeah. Thank you very much. I think that's a restatement  
7 of what I just said, yes.

8 Q. But I don't see in here any reference to the fact that  
9 since you didn't know what the VRA districts were you couldn't  
10 apply them. Do you see any reference to that here?

11 A. I don't see it here, but I believe in other places we  
12 discussed that and we certainly discussed it among ourselves.

13 Q. Okay. Now, going forward a few years. In October of  
14 2023, you published online a modified version of the algorithm  
15 that made it explicit how users could first draw a district,  
16 freeze that district, and then implement Stephenson's  
17 clustering procedure; isn't that right?

18 A. Yes, that's correct.

19 Q. This modified version of the algorithm has not been  
20 published in a paper as was the original version in that 2022  
21 article; is that right?

22 A. I disagree. The same algorithm is used in all cases.  
23 It's the exact same code. It's just the code around it that  
24 feeds in the information. Someone could have just as easily  
25 created a shape file where they remove the voting rights

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1 district that they cared about and fed that shape file into  
2 the original program. So it's the same algorithm. It's  
3 just -- we added a drop-down menu to make it possible to do  
4 this in some sense metaphorically.

5 Q. Okay. So -- but there were changes made to the code for  
6 this modified version of the algorithm, correct?

7 A. There were changes made to the wrapping code and then  
8 there was a secondary option that we put in that required some  
9 changing, but the main first-run version there was no changes  
10 to the core algorithm.

11 Q. There were changes to about 130 lines of code; isn't that  
12 right?

13 A. I have no idea. It's hard to import information how much  
14 information content is in number of lines changed, but yes.

15 Q. Let's start here. I have a couple of questions about  
16 that. Let me take them step-by-step.

17 Let's start back with that 2020 paper. Could we pull up  
18 LD47 please.

19 Dr. Mattingly, could you show us where in this published  
20 paper in this academic journal you describe the exercise of  
21 freezing a district, removing it from consideration, and  
22 applying the Stephenson clustering procedure to the remainder  
23 of the map? Take your time.

24 A. I'm not sure that we did. I'm happy to double-check  
25 that, but I'm not sure that we did. I don't remember if we

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1 did or didn't.

2 Q. You can take your time and check. Thank you.

3 (Pause in the proceeding.)

4 A. 15, is that what it is?

5 Q. It's LD47.

6 A. Thank you.

7 (Pause in the proceeding.)

8 A. I didn't read every single word of it. I don't want to  
9 subject all of you to that, but the main discussion of the  
10 Voting Rights Act is at the bottom page 20 and it says that we  
11 explicitly are not removing a district to comply with the  
12 Voting Rights Act here.

13 The fact is that the algorithm runs on a shape file. You  
14 can remove a district from the shape file and feed the  
15 remaining shape file to the algorithm and it will apply  
16 Stephenson to the remaining part. It's nothing that needs to  
17 have an explicit explanation. Anyone who has any facility in  
18 GIS could have done that.

19 Q. Do you remember testifying at your deposition that the  
20 changes you made to the code to make this exercise more  
21 explicit, that you had never reduced it to any sort of  
22 article?

23 A. I don't remember explicitly saying that in the  
24 deposition, but we did not publish an article after this about  
25 that, that is correct.

## J. Mattingly - Cross-Examination

1 Q. Okay. So a moment ago when you testified that the  
2 modified version of the algorithm had been published, is it  
3 indeed your answer that it had not been published?

4 A. I think it depends on what you mean by "published." When  
5 you say I published a code open source made repository open to  
6 the public, people often refer to that as publishing their  
7 code. So I did push that -- push is a term used in an  
8 open-source repository. We released that publicly, so we  
9 would call that -- the actual command is called publish. So I  
10 apologize if I use that word. But we published that to the  
11 public to use. And the location of that code is specifically  
12 stated in the published article.

13 Q. Okay. So when you testified earlier I understood your  
14 testimony to say that the modified version of the algorithm's  
15 code had not been published in a paper or an academic article  
16 like the first version of the code had been.

17 And I understood your answer then to be that it had been,  
18 but I understand your answer now to be that it has not been.

19 A. Well, I've clarified -- now, it has been published. It  
20 was published on a public repository. And the algorithm, the  
21 core of the algorithm that was used was the exact same one  
22 that was in the peer reviewed. If you're -- if you're trying  
23 to say if it was peer reviewed, the algorithm was peer  
24 reviewed and the main core of it was the same part; that was  
25 still peer reviewed.

## J. Mattingly - Cross-Examination

1 Q. Okay. So the modifications you made to the algorithm in  
2 October 2023, those have not been peer reviewed, have they?

3 A. So those are outside. So the code is never peer reviewed  
4 in an article. The procedure that's described is what's peer  
5 reviewed. The algorithm is released to the public for anyone  
6 to look at, right?

7 And you have to be a little careful. There were two  
8 different -- as we described in our expert report, there were  
9 two different ways to interpret Stephenson; one of them  
10 required essentially no modifications at all to our code, and  
11 that's the one that someone could have done from 2021; and the  
12 second one required a slight modification, which we did,  
13 and -- but they always result in the same output, as we say in  
14 our report.

15 Q. Okay. And the second one has not been peer reviewed,  
16 correct?

17 A. None of the code per se has been precisely peer reviewed;  
18 but no, those modifications of the algorithm were not peer  
19 reviewed, that's correct.

20 Q. Okay. In your report you state that the North Carolina  
21 General Assembly relied on the clustering options described in  
22 your paper to determine the possible county clusters available  
23 under Stephenson. Does that sound right to you?

24 A. By "my paper" you mean the one released to the public?  
25 Yes. That sounds right. Sorry. I just wanted to clarify

## J. Mattingly - Cross-Examination

1 because we're using different papers and you switched to a  
2 different paper now.

3 Q. I understand. And to be clear, I'm using your own  
4 language so it matters what you think what paper is at issue.

5 A. Right, right. But that was taken out of context so there  
6 was phrasing around that. Be sure that made clear which paper  
7 we meant.

8 Q. I see. Well, if you'd like for clarity it's on page  
9 three of your report. We can pull it up. It's PX1.

10 A. Yes. I understand what it was referring to. I was just  
11 making sure that my answer was interpreted correct.

12 Q. I understand. Okay.

13 (Pause in the proceeding.)

14 Q. So the paper at issue is the 2021 paper at LD40 -- pardon  
15 me. That's at Appendix 1 to your report; is that right? This  
16 is Joint Exhibit 115 if that makes it easier for you to find  
17 it.

18 A. Thank you. That does, in fact. Yes, that's the one.

19 Q. Okay. Who's Gregory Herschlag?

20 A. He's a research scientist at Duke University that works  
21 with me.

22 Q. And he's written code for the algorithm that applies this  
23 Stephenson clustering rule; is that right?

24 A. He's one of the people who wrote code, that's correct.

25 Q. And he wrote code for the modified version of the

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1 algorithm; is that right?

2 A. I mean, we wrote it together. He was part of writing  
3 that code, yes.

4 Q. Okay. And the code is available on a public online  
5 repository; is that right?

6 A. That's correct.

7 Q. And if you go to that online repository, you're able to  
8 see when changes are made to the code; is that fair to say?

9 A. Well, you're able to see who committed them to the public  
10 repository.

11 Q. Okay. And are you able to see when they committed them?

12 A. Yes.

13 Q. And are you able to see how many changes are made in that  
14 commit?

15 A. That's correct.

16 Q. And sometimes with changes to code in a repository like  
17 that, is there sort of a subject line to what the changes are?

18 A. Yes. It's just something that someone writes to help  
19 remember what they did later.

20 Q. And Dr. Herschlag committed changes for the modified  
21 algorithm to the online repository, didn't he?

22 A. I believe he was the primary person who made the commits  
23 to the public repository.

24 Q. Okay. And there are commits titled, "Adding Partial  
25 Clustering Capability." Does that sound right to you?

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1 A. I have no idea. You'd have to actually show me the  
2 repository.

3 Q. Great. Let's bring up Legislative Defendants' Exhibit 49  
4 and 50. And we can put them side-by-side, the first pages.

5 Dr. Mattingly, could you take a look at them when they  
6 come up and let me know when you're done reviewing so I can  
7 ask some questions.

8 A. I guess I would actually rather see all the commit. Can  
9 you show me the commits going back to 2023, the comments?  
10 It's hard to know exactly out of context what all these  
11 commits are.

12 Q. Yeah. I'm not sure we can. I can ask you some specific  
13 questions about what's on these pages, and then if you  
14 think --

15 A. You can try. It's just sometimes -- I'll take a look at  
16 it, but sometimes it's hard to put them in context without the  
17 context.

18 Q. Sure. About how many pages of code are we talking about  
19 when we talk about this algorithm?

20 A. Pages or lines?

21 Q. Yes. Either one.

22 A. Actually, I would -- that's not something I know right  
23 now.

24 Q. Okay. Would it be a lot or a few?

25 A. I don't think that has meaning. It depends on what it



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1 does, right? I mean, you know, a lot of code to run a space  
2 shuttle, I would tell you a different number what a lot is or  
3 to run the IRS, but I don't know.

4 Q. Would it be too much for you to review right now the  
5 entire code for that algorithm?

6 A. Actually, I don't know but...

7 Q. Okay.

8 A. I would have to -- but I honestly don't remember. I  
9 write a lot of code, and I don't remember all of the code.  
10 I've written a lot of code since this.

11 Q. Okay. So Dr. Mattingly, does this text look familiar to  
12 you? Have you seen this type of text before?

13 A. I've seen this type of text. I don't know if I ever  
14 looked at exactly -- this is what's called the diff, this  
15 shows the changes, the pluses and the minuses in a particular  
16 piece of code. That's not something that I might particularly  
17 ever look at for a certain commit. So I can't say I've ever  
18 actually looked at this diff before. You may have shown this  
19 to me before, but I don't remember.

20 Q. Okay. Does this indicate that on May 20th, 2024, Gregory  
21 Herschlag submitted a commit titled, "Adding Partial  
22 Clustering Capability"?

23 A. That's what the subject line says, yes.

24 Q. And does this indicate that the changes for the adding  
25 partial clustering capability involved at least 130 additions

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1 and nine deletions?

2 A. Do you think that's a lot or a little? You said that a  
3 certain way. I mean, that's what it says, that's correct.

4 Q. Thank you.

5 A. I should clarify that the partial clustering capability  
6 was not -- as I said in the report, there were two different  
7 ways to interpret this. This is not the only way, right?  
8 There's a straightforward other way to also interpret how to  
9 implement Stephenson and that was available from the  
10 beginning. That has no reliance on this modification at all.

11 Q. Can you describe briefly what you believe that  
12 straightforward other way is that existed all along?

13 A. Sure. You can take a GIS file. You could remove -- you  
14 could either remove that part of the state or you could  
15 cluster the entire region, a county cluster -- let me make  
16 sure I say this right -- into essentially one county, a  
17 Demonstration District, I should say. A Demonstration  
18 District into one county and only put in -- you have to  
19 remove -- only put the appropriate connectivity for that  
20 county cluster, and then you could run the algorithm on that.  
21 That's one option.

22 The other option is you just remove the Demonstration  
23 District completely from the state, cut it out and leave the  
24 rest of the state and run the algorithm on what's left.

25 Q. Can you explain which of those are one and two when

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1 you're describing them?

2 A. Right. So the first one I guess is one, and you could  
3 already do the version of two as long as you didn't want to  
4 only include a partial county in some way. There's some extra  
5 stuff that has to go in there, but that -- but that, none of  
6 those differences made any difference in the outcomes. We did  
7 them as much as just a curiosity to see whether it would make  
8 a difference and it didn't.

9 Q. So if you wanted to split a county in order to draw a  
10 Demonstration District or a VRA district, the capability to do  
11 that with your algorithm really wasn't there or clearly there  
12 until you added the modified version?

13 A. I disagree. You could have pulled off that county. You  
14 could have split the county in two and removed the part of the  
15 county you're putting your Demonstration District and left the  
16 remaining county from the very beginning. That was something  
17 that was easy to do for anyone.

18 Q. So then I want to make sure your testimony is clear and  
19 I'm understanding you.

20 I understood you to say that there was one version, one  
21 method that you were not able to do all along or it was more  
22 difficult. What is that version?

23 A. It would have been easy to do if anyone asks us and the  
24 minute someone asks us, we added the ability. So it's not  
25 hard, right?

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1       So sorry. I lost which one -- I forgot which one was  
2 which in your question. Could you just repeat the question?

3 Q.     Sure. I'm trying to understand. You had testimony -- I  
4 understood that there was a version of your code -- there was  
5 a modification to your code in October 2023 that was a method  
6 for dealing with freezing -- freezing areas that wasn't there  
7 before; it was much harder to do, you made it clearer. I'm  
8 trying to get at what that method is.

9 A.     It wasn't much harder to do, we just made it clearer.  
10 There's a difference between those two phrases.

11       That method would have been you took a region of the  
12 state and you either removed it completely and just  
13 redistricted the remainder or you could have just removed,  
14 taken a region of the state, grouped it together and just left  
15 it as one entire kind of county. Could have done either of  
16 those before 2023.

17       And then we actually put in some lines in the code to  
18 say, hey, if you want to do this, this is where you would do  
19 it. But it's not even in the algorithm. It's in the  
20 preamble, if you will; it's in the setup.

21 Q.     Dr. Mattingly, do you remember testifying at your  
22 deposition on this issue?

23 A.     I remember you asking me questions about it, yes.

24 Q.     And do you remember saying that this ability to do the  
25 partial clustering was always in one way at least was always

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1 there. We did implement one of these two methods at a later  
2 date. Do you remember saying that?

3 A. Yes.

4 Q. What did you mean about this later date?

5 A. So the ability to kind of go in and automatically have a  
6 simple way of making those connections if you pulled off a  
7 chunk -- so the first way, you cut it out and put it aside was  
8 always easily there.

9 The other one was also possible, but we just added some  
10 code to make that more easy to do.

11 Q. And can you describe that other way?

12 A. That other way is where you pull off a piece and you want  
13 to still kind of allow it to be another county cluster, so you  
14 have to pull off a piece and then create -- make it  
15 essentially its own big county. So you take the piece that  
16 connects to the rest of the region and you --

17 THE WITNESS: If I had a chalkboard, Your Honor,  
18 this would be much easier. I apologize.

19 THE COURT: Do the best you can without one.

20 THE WITNESS: I will, yes, sir.

21 So it's essentially you keep the part of the  
22 Demonstration District that's still connected to the rest and  
23 you make this new part kind of disconnected but only connect  
24 it here, so you force the algorithm to keep that together  
25 while still making a new county cluster.

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1           It's not very hard to do, but we just made it a way  
2 to automate that for ourselves, and that's what these code  
3 modifications are.

4 BY MS. McKNIGHT:

5 Q.   Those code modifications on May 20th, 2024?

6 A.   Yeah. I think there might have been some before that.  
7 That's the problem. You can't -- you haven't shown me the  
8 whole history. So I can't tell whether those were just small  
9 tweaks or whether the main modifications had been made  
10 earlier. You know, I can't really attest to that because  
11 there's a whole history going back, and I can't tell you  
12 whether -- sometimes you make a small change somewhere just to  
13 kind of clean something up or to reduce some edge case that  
14 you realize might be a weird behavior or something.

15 Q.   I'd like to ask you about freezing districts in the  
16 demonstrative.

17 A.   Yes.

18 Q.   For this case you applied the modified algorithm to  
19 create the county clusters and someone else decided how to  
20 draw the VRA districts; is it fair to say?

21 A.   I wouldn't say it that way. We applied the Stephenson  
22 algorithm to it.

23 Q.   Did -- are you suggesting that you yourself created the  
24 VRA districts?

25 A.   No, no, no. Once -- you said the modified algorithm. We

1 just applied the Stephenson, the Stephenson court case  
2 algorithm. So somebody else decided whether it was a VRA  
3 district or a Demonstration District, and we took that  
4 Demonstration District, we froze that -- we removed that -- we  
5 assumed that was going to be one of the districts and then we  
6 proceeded from there.

7 Q. When I use the term "modified algorithm," I'm referring  
8 to the version of the algorithm that included those  
9 October 2023 or later changes that added that other way to  
10 cluster. Can we agree to that?

11 A. No. Because as I said before, that wasn't a change to  
12 the fundamental algorithm. It's a change to the preamble of  
13 the code that leads into the algorithm, so it's not changing  
14 the algorithm.

15 I know you seem to want to say that, but that's not  
16 what -- that's not how it characterizes it as much.

17 Q. Why did you make the changes if they weren't necessary?

18 A. Because it made it easier for us to run it.

19 Q. And so when you ran it, you were using the version of the  
20 algorithm that had those changes in it, correct?

21 A. Sorry. I will specify one thing. I mean, there was this  
22 one change to do this other slightly different version that  
23 made it even easier for us to implement that and we -- that  
24 was useful to do. But we could have run either of them  
25 beforehand. It's really the Stephenson algorithm of taking

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1 counties -- once you remove something, taking the remaining  
2 part and joining them together and continuing on down, and  
3 that's the same algorithm in all cases.

4 Q. Okay. Okay. So I understand that somebody else drew the  
5 VRA districts and then provided you those districts in order  
6 for you to apply the algorithm; is that fair to say?

7 A. That is fair to say.

8 Q. So before you ran the algorithm, you received direction  
9 from someone about which parts of the geography of the map  
10 should be frozen, correct?

11 A. From Plaintiffs' counsel.

12 Q. Okay. Thank you. Your report shows maps for county  
13 clustering options in four Demonstration Districts: A, B, C,  
14 and D; isn't that right?

15 A. Yes.

16 Q. Okay.

17 A. There's one in the rebuttal report also, but I understand  
18 that's not in play.

19 Q. Let's take a look at a few examples. Let's pull up PX1  
20 at page 6. This page shows your work for Demonstration  
21 District A. Do you see that?

22 A. Yes. Just one second. I'm also just finding it in my  
23 report, if you don't mind.

24 Q. Take your time.

25 A. Yes, I have it. I agree.



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1 Q. So for Demonstration District A, you were told to freeze  
2 District A, correct?

3 A. District A and the Pitt-Edgecombe.

4 Q. That was my next question. You were also asked to freeze  
5 the Pitt-Edgecombe pairing?

6 A. That is correct.

7 Q. Okay. And you testified a little bit about this earlier,  
8 but just so it's clear. If you had only frozen District A,  
9 then the algorithm would have developed a county grouping  
10 option that split Pitt-Edgecombe, correct?

11 A. I believe so. We have to look at my rebuttal report to  
12 actually make sure. If we could switch to that just so I make  
13 sure I don't misspeak.

14 Q. Let's pull up PX114 so you can take a look.

15 A. Yes, that's correct.

16 Q. And on rebuttal you were responding to a report -- to  
17 reports by Defendants' experts; is that right?

18 A. Yes, that is correct.

19 Q. And when one of Defendants' experts, Dr. Trende, pointed  
20 out that freezing only District A could produce a grouping  
21 option where Pitt-Edgecombe are not paired, you corrected him  
22 to say that his was but one option and there were, in fact,  
23 eight possible county grouping options in total; do you recall  
24 that?

25 A. Yes. I think he represented that this was the one county

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1 grouping option that it resulted in and that wasn't true.

2 There were eight possibilities, that's all. It was just a  
3 small point.

4 Q. I see. And you never analyzed those eight possible  
5 county grouping options, did you?

6 A. What do you mean, "analyze"? I think I presented them  
7 all here. They're all right here.

8 Q. In your -- on the next page?

9 A. I lost track of which -- I'm sorry. There's so many  
10 different groupings. Which one are you talking about now?  
11 The one in the rebuttal report or the one with exhibition --  
12 with Demonstration District A?

13 Q. So in the rebuttal report when you did the exercise of  
14 freezing District A but not freezing Pitt-Edgecombe.

15 A. Correct. And if you look, all of those eight  
16 possibilities, you see the large map there on page 2 of the  
17 rebuttal report; and then if you look below it, there's the  
18 smaller maps and you see that there's two choices for the  
19 right, for the area around Wilmington, there's two area -- two  
20 choices in the Western District just coming down towards the  
21 Georgia border below Asheville, and then two above Asheville,  
22 and so that's two times two times two which is eight, that's  
23 the eight you were referring to, and they're all right here.  
24 So we did show them, in fact, right here.

25 Q. Now, for Demonstration Districts B, C, and D, you were

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1 not asked to freeze Pitt-Edgecombe; is that right?

2 A. That is correct.

3 Q. But Pitt-Edgecombe were nonetheless fixed by nature of  
4 how those districts were drawn, correct?

5 A. Not districts drawn but the Stephenson algorithm produced  
6 them organically by -- in creating not the districts but the  
7 county clusters.

8 Q. But the way that the Stephenson algorithm applied when  
9 you fed in Demonstration Districts B, C and D, is that Pitt  
10 and Edgecombe were always fixed; isn't that right?

11 A. Yes, it always produced a county cluster out of Pitt and  
12 Edgecombe.

13 Q. I have a question to confirm my understanding of how your  
14 algorithm would work in practice.

15 Is it a correct understanding that someone could have  
16 drawn Demonstration Districts B, C, and D with a goal of  
17 protecting Pitt and Edgecombe, tested those districts with  
18 your algorithm to ensure that the only grouping options  
19 developed maintained that Pitt-Edgecombe pairing and then  
20 giving you only the districts that were drawn so that when you  
21 applied the algorithm, freezing only the districts, Pitt and  
22 Edgecombe would always be pared?

23 A. This doesn't sound like anything to do with how my  
24 algorithm works. You're asking me about someone else's  
25 motivation. I mean, the algorithm, you give me the districts,

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1 you freeze it, I tell you what it gives out.

2 Q. You spoke a lot earlier about how your algorithm was  
3 publicly available; do you remember that?

4 A. That's correct.

5 Q. So what I just described as a process, is there anything  
6 that I said, though, that's just impossible?

7 A. I mean, could anyone run the algorithm? Absolutely.

8 Q. Okay. Do you know if Districts B, C, and D were drawn  
9 with a purpose to protect the Pitt-Edgecombe pairing?

10 A. No. I have no insight into why those districts were  
11 driven -- drawn.

12 Q. Okay. Let's move to page 5 of your report.

13 A. Page 5 of the report.

14 Q. Yes. Your opening report, so that would be PX1.

15 A. I apologize. My mistake. But my pages aren't numbered.  
16 I could number them if you give me 30 seconds or you can.

17 Q. That's okay. It's the fifth page in that document. So  
18 it's PX1 from the fifth page.

19 A. Which paragraph?

20 Q. So it starts with the second paragraph and goes on to  
21 describe two options. Do you see that?

22 A. Yes, I do. I see. I see it on the screen now too.  
23 Sorry.

24 Q. Am I correct in understanding that on this page you  
25 describe two methods for dealing with split counties?

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1 (Pause in the proceeding.)

2 A. Yes, that's what we have here.

3 Q. Am I correct in understanding that when you refer to one  
4 option -- I'll refer to it as method one just to be clear. In  
5 method one you would remove a frozen district along with any  
6 split from a clustering exercise, you treat it as its own  
7 district and then you apply your algorithm to the remaining  
8 part of the map?

9 A. That is correct.

10 Q. So if you'll bear with me, I'm going to refer to that as  
11 method one just to be clear.

12 A. Sure.

13 Q. So for the next what you refer to as second option, I'll  
14 refer to as method two. For method two, do you treat the  
15 frozen district along with its split as if it were part of a  
16 cluster containing the entirety of the frozen district along  
17 with other districts in that cluster?

18 A. Okay. Let me just read what we wrote here and let me  
19 have you ask your question again just to make sure I'm using  
20 the same language as you.

21 Go ahead. Ask your question again.

22 Q. Sure. In method two you treat the frozen district along  
23 with its split as if it were part of a cluster containing the  
24 entirety of the frozen district along with other districts in  
25 that cluster?

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1 A. Right. So we allow the possibility of it to be part of a  
2 larger county cluster.

3 Q. Great. Okay. So to illustrate this, I'd like to pull up  
4 a page from your backup data, Dr. Mattingly. Let me pull it  
5 up and ask you a few questions about it.

6 The title of this document from your backup data is  
7 DemoC\_Method2\_Consistent.

8 Dr. Mattingly, do you recognize this type of map?

9 A. What do you mean by type of map? This looks like one of  
10 the redistricting maps we created, yes.

11 Q. I'll represent to you that we pulled this out of your  
12 backup data and the title of the document is  
13 DemoC\_Method2\_Consistent.

14 Do you recall preparing backup data with maps for  
15 Demonstration Districts that showed method one and two?

16 A. Greg was the one that pushed those to the final  
17 repository; but, yes, I mean, these are all the things that  
18 we -- from our investigations. I don't remember exactly what  
19 this is from.

20 Q. I see. Does it help jog your recollection that the title  
21 of the document that it says DemoC\_Method2?

22 A. Yes. I mean -- I don't -- there was a lot of data and  
23 this was a long time ago. I don't remember exactly what each  
24 file was, but it seems -- that would seem to imply it has to  
25 do with Demonstration District C, yeah, that's right.

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1 Q. Okay. So here when I'm looking, do you see Demonstration  
2 District C in a cluster in the north of the state in the  
3 yellow-colored cluster?

4 A. Yes.

5 Q. And do you see the number three in parentheses?

6 A. Yes. Am I correct this is the same that's in my report,  
7 just the colors are different?

8 Q. I guess so, Dr. Mattingly. It's what we pulled from your  
9 backup data, so it's whatever colors you have chosen.

10 A. They're chosen automatically.

11 Q. To make sure the record is clear, Dr. Mattingly, I'm  
12 going to share some screenshots of file folders in your backup  
13 data so you can see the source of this document.

14 Will that help you understand where it was in your backup  
15 data?

16 A. Maybe. The exact organization of the backup data Greg  
17 did, but I don't remember exactly what -- you can show it to  
18 me.

19 Q. Okay.

20 (Pause in the proceeding.)

21 Q. While we wait for this to be brought up, Dr. Mattingly,  
22 do you recall submitting backup data with your report in this  
23 matter?

24 A. I do.

25 Q. Okay. And what's on your screen, do you recognize the

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1 backup data starting with, Export Report of Dr. Jonathan  
2 Mattingly, 2024-05-31-backup data; do you see that?

3 A. Yes, I do.

4 Q. And then there's a subfolder that says Stephenson  
5 analysis; do you see that?

6 A. Yes.

7 Q. And then a subfolder there called maps; Do you see that?

8 A. Yes.

9 Q. Okay. Does this look like part of the backup data, a  
10 folder that you had submitted as part of your backup data and  
11 the expert report in this matter?

12 A. Yes, it seems to be.

13 Q. Do you see the list of subfolders listed here starting  
14 with Demo A and ending with DemoD\_Method2; do you see that?

15 A. Yes.

16 Q. Do you remember the exercise of preparing these backup  
17 maps?

18 A. As I said, I wasn't intimately involved in exactly  
19 putting together the exact data structure of which districts  
20 and what they were each called.

21 Q. Okay. But you don't dispute that this is backup data  
22 that you submitted with your expert report?

23 A. That's correct.

24 Q. Okay. So let's open the folder DemoC\_Method2.

25 Dr. Mattingly, here, do you see now that we've gone into the



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1 subfolder DemoC\_Method2 from the folder we were just looking  
2 at?

3 A. Yes.

4 Q. Do you see a list of PNG files labeled DemoC\_Method2  
5 either consistent or inconsistent?

6 A. Yes, I do.

7 Q. Okay. So now DemoC\_Method2\_Consistent is the document we  
8 were looking at with the map that we were just discussing,  
9 does this refresh your recollection that this is a file that  
10 you submitted with your backup data?

11 A. I actually don't remember any of these files precisely.

12 Q. Okay. But you don't dispute that you submitted backup  
13 data with your expert report?

14 A. That's correct.

15 Q. Okay. Let's go back to DemoC\_Method2\_Consistent. So in  
16 this method two map Demonstration District C is included in  
17 the yellow area in the northeast with the number three in  
18 parentheses; do you see this?

19 A. Yes, I do.

20 Q. And this number three makes sense because in method two  
21 District C would be included in a county cluster with two  
22 other districts, right?

23 A. Yes.

24 Q. Forming three districts in that cluster?

25 A. That's correct.

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1 Q. Okay. And also on this map on the eastern coast, you  
2 show in your map where a district will make up -- where an  
3 area will make up one district, and you show that by  
4 indicating a one in parentheses; do you see that?

5 A. Yes.

6 Q. So method one differs from this method two in that in  
7 method one you would have pulled District C with its portion  
8 of the split county and apply the county clustering rules of  
9 the remainder of the area as if Districts C were its own  
10 individual district, right?

11 A. Yes.

12 Q. All right. So let's pull up the method one map. Let's  
13 look at DemoC\_Method1\_Consistent.

14 Dr. Mattingly, we pulled this document out of your backup  
15 files in the same way pulled DemoC-Method2\_Consistent. I'm  
16 going to ask you some questions about what it shows.

17 Dr. Mattingly, just so we're clear we're going to do a  
18 side-by-side of DemoC\_Method2 on one side and DemoC\_Method1 on  
19 the other.

20 A. So I think I may have misspoke slightly in one of the  
21 things I said. I think if you look at method one what it says  
22 is it says, you treat the nonfrozen portion of the county as  
23 if it was its own whole county, right?

24 I'll let you ask your question. Go ahead.

25 Q. You're getting to where my question is. I would expect

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1 when we pulled up DemoC\_Method1, that we would see not a  
2 county grouping with the number three where Demonstration C  
3 is, but rather a District C that has a one and then two other  
4 districts separate from Demonstration C., because I understood  
5 you to testify that method one you would pull out District C  
6 and treat it as its own county cluster and then apply  
7 Stephenson to the remainder of the map.

8 But what we're seeing in the map is District C is lumped  
9 together with the remainder of the county grouping just as it  
10 was in method two.

11 A. Right. So the point is that when you create -- because  
12 this one had a partial county, right, so you create -- you  
13 create -- so I think I misspoke a little bit. It gets a  
14 little tricky --

15 THE COURT: When you say, "this one," do you mean  
16 the VRA district?

17 THE WITNESS: Sorry. The Demonstration District,  
18 that's correct.

19 So why don't I read what it says in the report. So  
20 what it says: "One option is to treat the nonfrozen portion  
21 of the county as if it were its whole county." Right?

22 So you have -- so this is all about the subtlety of  
23 when you're going to split a county in your Demonstration  
24 District ahead of time. So there's a nonfrozen party, so you  
25 have this district which has a nonfrozen party part and it

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1 says: You treat the nonfrozen portion of the county as if it  
2 was a whole county, as such, the algorithm would treat a  
3 cluster that joined this nonfrozen part of the county to an  
4 adjoining whole county as a two county cluster, right? Or  
5 join that nonfrozen part to adjoin as a three county cluster.

6 So -- I'm sorry. I just want to make sure. I think  
7 I muddled my language. So I want to just make sure I say this  
8 very clearly. It's clear in my head, but it's a little tricky  
9 to say.

10 Right. Okay. So the thing is -- let me explain  
11 this now. So I understand. So let me -- if I can restate  
12 your question as far as I understand your confusion.

13 It's that you're confused why we don't have a  
14 district that has a one in it and then a district that has a  
15 two?

16 BY MS. McKNIGHT:

17 Q. Correct.

18 A. Okay. Because what happens her is --

19 Q. I'm so sorry to interrupt, but I want to make sure it's  
20 clear. We're not talking about districts; we're talking about  
21 clusters or groupings.

22 A. Right. That's correct. Thank you. Yeah. Turnabout is  
23 fair play. I did that before. Thank you very much.

24 So what happens is you take this county, there's a  
25 Demonstration District that has part of a county in it.

## J. Mattingly - Cross-Examination

1 Option one, you take the part of the county that's remaining  
2 and you say let's pretend that was its own county, right? So  
3 now when you cluster it, it will be clustered with somebody  
4 else to create a new county clustering. But when you report  
5 it, the state is not interested in some made-up split county  
6 that you created to run the algorithm, you report it as the  
7 whole cluster because now this county cluster is this  
8 Demonstration District and the county here and all the part it  
9 was connected to. So you report the -- all the whole actual  
10 counties of the State of North Carolina that were involved in  
11 that county cluster.

12 Q. Okay.

13 A. So these are completely consistent.

14 Q. Okay. So my question is not about how you reported it to  
15 the state.

16 A. Right.

17 Q. My question is about how your backup data illustrating  
18 method one as compared to method two, which you described as  
19 being different methods, one treats it as one district and two  
20 districts together as the clusterings, another lumps them all  
21 together as we see in both maps. My question is why your  
22 backup data shows that the results of applying these two  
23 different methods there was no difference?

24 A. Because there shouldn't be a difference. So if you  
25 imagine -- the first one says we're going to create a county,

## J. Mattingly - Cross-Examination

1 I don't know what county is split, I'll just make up one, you  
2 know, pick a county there, I can't remember a county,  
3 Pasquotank. Let's say Pasquotank is the one that is split.

4 So you create a Pasquotank A, which is in the specified  
5 district and a Pasquotank B which is not in the Demonstration  
6 District, then you perform the county clustering and when  
7 you're done you'll have a county clustering that contained  
8 Pasquotank B, right? So now the county clustering is whatever  
9 it was with Pasquotank B, part B, but that doesn't make any  
10 sense, right? You need to report full county cluster. So  
11 when you report the cluster, you report Demonstration District  
12 and the one that it was joined to because Pasquotank is just  
13 one county. So you have a district that splits it. So  
14 that's -- that's what the algorithm is showing here.

15 So I'm not -- I understand that it's confusing, but I  
16 don't think there's -- there is no inconsistency here.

17 Q. To be clear, I don't think I'm confused.

18 A. Okay.

19 Q. Right. I'm looking at two maps that you told us  
20 different methods were applied where one method would treat  
21 the county grouping with one district separate from a two  
22 district cluster.

23 A. But they have a split county. They have a split county,  
24 so when you put them back together they are fused into one.  
25 The point is these two methods produce the same result in this

## J. Mattingly - Cross-Examination

1 case.

2 Q. Okay. I understood your testimony that method -- when  
3 you applied method one you were creating -- you were creating  
4 an area where the district that was drawn, including the  
5 split, would be pulled out and treated as its own cluster.

6 A. It would be removed from the map. So I was -- when I was  
7 speaking there, I was thinking of the example -- I think we  
8 were talking about District A at the time, and District A  
9 there were no split counties and so I was speaking in a  
10 simplified manner about that one district.

11 So I was talking about the case where all the counties  
12 were kept whole. But if the Demonstration District splits the  
13 county, you have to be slightly more subtle about it. You  
14 have to pull off that part and treat it as already clustered;  
15 but then when you create the new cluster, whatever cluster  
16 that county would be joined with, you connect them all  
17 together to make one cluster.

18 Q. So our discussion about method one and two have all been  
19 rooted on page 5 of your report where you discuss how to deal  
20 with splits.

21 A. That's correct.

22 Q. We've been talking about how to deal with county splits  
23 and we discussed method one and method two.

24 A. That's correct.

25 Q. And I understood your testimony to be that under method

## J. Mattingly - Cross-Examination

1 one that area of the district, including its split, any county  
2 portion that it split off, so Demonstration C, for example,  
3 here, would be pulled out and treated as its own cluster?

4 A. I shouldn't have said its own cluster. Should just be  
5 treated -- it's pulled off separately and the map -- it's  
6 removed completely from the map and whatever's left over is  
7 made into its own county.

8 If part of a county is left, it's made into its own  
9 county, and then the algorithm is run to create county  
10 clusters, and then that county's put back together so that  
11 county cluster -- that county -- that district, the  
12 Demonstration District is joined back with the county cluster  
13 that would be with its fused county.

14 Q. Where in this map does it show that in method one you  
15 pulled that area off to make its own grouping?

16 A. It's not showing here. What's shown here is the  
17 resulting county clusters at the end.

18 Q. So when we look at your backup data, it shows when you  
19 applied method one to District C, District C is not set off as  
20 its own grouping, it's still included in a three-district  
21 grouping; is that right?

22 A. That's correct.

23 MS. McKNIGHT: Thank you, Dr. Mattingly. I have no  
24 further questions.

25 THE COURT: Anything else? I'm assuming the



## J. Mattingly - Redirect Examination

1 Legislative Defendants will stand up if they want to stop  
2 being Switzerland. So I look back to you at the Plaintiffs'  
3 table.

4 MS. THEODORE: Okay. Thank you.

## 5 REDIRECT EXAMINATION

6 BY MS. THEODORE:

7 Q. Dr. Mattingly, you were asked a few questions about  
8 changes you made to make it more explicit or transparent in  
9 your code for someone to freeze a VRA district and then to run  
10 the Stephenson algorithm to create county clusters for the  
11 remainder of the state. Do you recall that?

12 A. Yes, I do.

13 Q. To be clear, even before the changes in 2023, just using  
14 the original code in 2020, could someone in this field with  
15 facility in GIS have used your code to freeze a VRA district  
16 and then apply the Stephenson algorithm to create county  
17 clusters for the remainder of the state?

18 A. Yes, that would have been straightforward. It was  
19 straightforward for us to change it and it would have been  
20 straightforward.

21 Q. All right. You were asked some questions about the  
22 images from your backup data that resulted from the two  
23 methods of applying the Stephenson algorithm when the  
24 Demonstration District split a county; do you recall that?

25 A. Yes, I do.

## J. Mattingly - Redirect Examination

1 Q. Those images, do you use those images to visually  
2 represent the overall clusters that would result from running  
3 the Stephenson algorithm?

4 A. Yes.

5 Q. All right. And do you say in your report that on page 5  
6 that in all three cases we obtained the same clustering  
7 options regardless of which version of the algorithm we used?

8 A. Yes, we do.

9 Q. Is the fact that your backup data shows the same  
10 clustering options for both methods of the algorithm for  
11 Demonstration District C consistent with that statement in  
12 your report?

13 A. It is.

14 MS. THEODORE: All right. No further questions.

15 THE COURT: Thank you. Anything else?

16 MS. McKNIGHT: No, Your Honor. Thank you.

17 THE COURT: Thank you, Doctor. Please watch your  
18 step stepping down. There's a step up as you come off the  
19 witness stand and a step down through the gate.

20 The Plaintiffs may call their next witness.

21 MR. FREEDMAN: The Plaintiffs call Blake Esselstyn.

22 BLAKE ESSELSTYN,  
23 having been duly sworn, testified as follows:

24 THE COURT: Whenever you get situated, the  
25 Plaintiffs' lawyer is going to have some questions for you.

## B. Esselstyn - Direct Examination

1           You may examine the witness.

2                                 DIRECT EXAMINATION

3 BY MR. FREEDMAN:

4 Q.     Could you state your name for the record.

5 A.     First name Blakeman.   Last name Esselstyn.

6 Q.     Mr. Esselstyn, do you have a demonstrative for your  
7 testimony today?

8 A.     I do.

9 Q.     Is this your demonstrative?

10 A.    Yes.

11 Q.    Where are you presently employed?

12 A.    I'm the principal of a consultancy called Mapfigure  
13 Consulting.

14 Q.    And how long have you been there?

15 A.    I founded the company under a different name in 2015,  
16 early 2015, so it's been about 10 years.   But essentially the  
17 same type of business.

18 Q.    What is Mapfigure Consulting?

19 A.    It is a boutique consultancy providing services in the  
20 areas of geographic information systems, redistricting, and  
21 demographic analysis.

22 Q.    Could you describe your professional background before  
23 founding Mapfigure Consulting or its predecessor?

24 A.    Yes.   I have had positions over almost 30 years since I  
25 graduated from college in the public and private sector mostly

## B. Esselstyn - Direct Examination

1 working with geographic information systems in some capacity  
2 or other.

3 Q. What is geographic information systems?

4 A. Geographic information systems is a term related to  
5 software and technology and data that are used to analyze and  
6 display geographic data; in other words, making maps and doing  
7 analysis of the geographic nature of data.

8 Q. Thank you. What is your educational background?

9 A. I have a Bachelor's degree in geology and geophysics and  
10 international studies from Yale University and a Master's  
11 degree in computer and information technology from the School  
12 of Engineering and Applied Sciences at the University of  
13 Pennsylvania.

14 Q. Have you ever presented at conferences?

15 A. I have indeed.

16 Q. Could you give the Court a couple examples of conferences  
17 you've testified at -- you've spoken at?

18 A. Sure. I spoke at a conference at Harvard University  
19 called the Geography of Redistricting. I also spoke at a  
20 conference at Duke University, I believe it was called  
21 Quantitative Investigations of Redistricting and  
22 Gerrymandering or gerrymandering and redistricting.

23 Q. Could you describe your background with public  
24 redistricting?

25 A. Yes. So in addition to kind of demonstration events in

## B. Esselstyn - Direct Examination

1 2021, I joined with a group of attorneys and one other  
2 demographer who provided nonpartisan redistricting services  
3 around the State of North Carolina to various government  
4 entities.

5 Q. Could you identify some of the jurisdictions you worked  
6 with in North Carolina?

7 A. Sure. I created countywide plans for counties such as  
8 Mecklenburg County, Union County, Durham County, Wake County,  
9 Pitt County, Edgecombe County, Craven County, for example, as  
10 well as municipal plans for, for example, City of  
11 Fayetteville, City of Clinton, City of Greenville, Town of  
12 Tarboro.

13 Q. Can you describe your familiarity with North Carolina  
14 geography?

15 A. Sure. I'm a North Carolina native, born in Mecklenburg  
16 County and for most of my adult life I've lived in Asheville  
17 in the western part of the state. As I just described, I've  
18 done work all over the state. I'm a geography nerd so having  
19 lived in the state for most of my adult life I've become very  
20 familiar with the geography.

21 Q. Thank you. Could you also please describe your  
22 redistricting work outside of North Carolina?

23 A. Sure. So I have, as I mentioned, been involved in  
24 conferences for organizations like the National Conference of  
25 State Legislatures that have been held in other states and

## B. Esselstyn - Direct Examination

1 dealt with redistricting in other states. I have been  
2 involved in federal court case that was based in Georgia as  
3 well as doing consulting expert work for cases in Kansas and  
4 Texas are some examples.

5 Q. Thank you. Could you describe your background with  
6 census data?

7 A. Yes. I began working with census data in graduate  
8 school. So I started graduate school in 2001, and that was  
9 the year that the data from the 2000 Census were released.  
10 And I worked with a professor at the University of  
11 Pennsylvania who was very interested in applying GIS to those  
12 census data.

13 So since that time, I have worked extensively with the  
14 data. And during a 10-year period when I worked for the City  
15 of Asheville, North Carolina, I was the city's liaison, the  
16 staff member for the city who was the liaison to the Census  
17 Bureau.

18 Q. Have you ever served as an expert witness?

19 A. I have.

20 Q. Have you served as a testifying expert in a redistricting  
21 case?

22 A. I have, yes.

23 Q. What case is that?

24 A. The case I believe is called Grant versus Raffensperger,  
25 and it was combined into another case but that was the

## B. Esselstyn - Direct Examination

1 original name of the case that I was involved in. It's a  
2 Section 2 case in Georgia.

3 Q. Were you qualified as an expert in the cases where you  
4 testified?

5 A. Cases plural?

6 Q. Where you testified.

7 A. Yes. There was the redistricting case that I just  
8 mentioned. I've also testified as an expert witness in three  
9 other cases that were not related to redistricting and was  
10 credited in all of those as well.

11 Q. Great, thank you.

12 MR. FREEDMAN: Troy, can we please pull up  
13 Plaintiffs' Exhibit No. 70.

14 BY MR. FREEDMAN:

15 Q. Mr. Esselstyn, what is this document?

16 A. This is a copy of my CV from August of last year.

17 Q. Does Plaintiffs' Exhibit No. 70 truly and accurately --  
18 I'm sorry. Is it a true and accurate copy of your CV that  
19 accurately describes your publications and presentations as  
20 well as your redistricting work?

21 A. Yes.

22 MR. FREEDMAN: Troy, Let's go back to the  
23 demonstrative slides and if we could go to slide two.

24 BY MR. FREEDMAN:

25 Q. Could you describe the purpose of your testimony?

## B. Esselstyn - Direct Examination

1 A. Yes. I would say initially one thing that I plan to  
2 provide is an overview of the geography and demographics of  
3 North Carolina, and particularly northeastern North Carolina  
4 and some changes over the decades since the 2010 Census. And  
5 then also to present my analysis related to whether there's an  
6 area in northeastern North Carolina where the Black population  
7 is sufficiently large and geographically compact to enable the  
8 creation of a majority-Black State Senate District that is  
9 reasonably configured.

10 Q. Thank you. Can you just give an overview how you went  
11 about your assignment?

12 A. Sure. I think I started with my familiarity with North  
13 Carolina geography, as I mentioned, and then in using a number  
14 of tools, GIS software that is specifically designed for the  
15 purpose of redistricting, I used the combination of geographic  
16 data as well as census numbers that are related to those data  
17 to look at districts and do the analysis of those districts  
18 that allows me to make that determination.

19 MR. FREEDMAN: Thank you.

20 Your Honor, at this time Plaintiffs tender Mr.  
21 Esselstyn as an expert in geographic information systems,  
22 redistricting, mapmaking, and analysis of census data.

23 THE COURT: All right. You may proceed.

24 MR. FREEDMAN: Thank you, Your Honor.

25 Troy, can you go to the next slide?



## B. Esselstyn - Direct Examination

1 BY MR. FREEDMAN:

2 Q. Mr. Esselstyn, just focusing on your May 2024 report,  
3 what conclusions did you reach in this case?

4 A. I would say there are three basic conclusions: One is  
5 that it is possible to create an additional reasonably  
6 configured majority-Black Senate district in the northeastern  
7 part of the state. Not only is that possible, there are  
8 multiple ways to do so, and it is possible to create maps  
9 containing those majority-Black Senate districts that comply  
10 with the traditional redistricting principles as well as the  
11 Stephenson county grouping requirements.

12 Q. Thank you. I'm now going to briefly discuss your  
13 rebuttal report. Why did you prepare a rebuttal report in  
14 this case?

15 A. I was asked to for two reasons. There were data that  
16 were made available after I submitted my May report that had  
17 not been available at the time that I submitted my May report  
18 so the rebuttal report allowed me to update my analysis using  
19 those data.

20 In addition, I was asked to review the report of an  
21 expert, Dr. Trende, and provide my response to his report.

22 Q. Great.

23 Let's pull up the next slide, slide four.

24 Now recognizing that the Court has issued a ruling  
25 precluding discussion of Demonstration District E, what

## B. Esselstyn - Direct Examination

1 else -- what conclusions did you reach -- what other  
2 conclusions did you reach in your rebuttal report?

3 A. I would say that I concluded that my May 2024 conclusions  
4 were still valid based on the -- using the updated data and  
5 that the report from Dr. Trende showed a number of  
6 inaccuracies and errors that I felt undermined the validity of  
7 his opinions.

8 Q. I'm now going to turn to your methodology and define some  
9 key terms that you use in your analysis.

10 Maybe the easiest way to start is: At a high level, can  
11 you provide an overview of the process by which you use to  
12 draw electoral districts?

13 A. Yes. And this will be similar to the answer I gave  
14 before. But, again, I begin with just the familiarity with  
15 the area that we're looking at and then I use software that  
16 has either comes with the census data installed, that's  
17 provided with the software or I import the census data into  
18 the software and then use that to either draw districts from  
19 starting with a blank slate or in many cases I start with an  
20 existing district and modify that. And the software allows me  
21 to perform analysis of characteristics of the districts and  
22 then there's usually a trial-and-error period, a kind of  
23 iterative process of seeing which configurations might be  
24 better or worse for different characteristics, and then  
25 ultimately I'll produce a district that I feel is

## B. Esselstyn - Direct Examination

1 inappropriate, a Demonstration District or series of  
2 districts.

3 Q. Thank you. Are there any particular software products  
4 you use?

5 A. Indeed. I would say there are three. The primary ones  
6 are one called Maptitude for Redistricting, which is from the  
7 Caliper Corporation. I use a piece of software called QGIS,  
8 which is an open-source geographic information system package  
9 that has a redistricting module and a web-based product called  
10 DRA.

11 Q. Does DRA stand for anything?

12 A. It stands for Dave's Redistricting App.

13 Q. Is there any reason why you would use one over the other?

14 A. I find that some tools are better for some purposes.  
15 Some allow me to be faster. For example, the Maptitude for  
16 Redistricting I feel has the best tools for doing the  
17 quantitative analysis of compactness.

18 Q. And which did you use for your analysis in this case?

19 A. Which of the --

20 Q. Which of the softwares?

21 A. In -- all three.

22 Q. Now, you mentioned -- let's talk about census data. What  
23 kinds of census data did you use for this project? And  
24 actually, why don't we pull up the next slide.

25 A. I'd say there are three general categories of data, the

## B. Esselstyn - Direct Examination

1 census data that I used. One would be the geographic files.  
2 Sometimes these are called the TIGER files. So these provide  
3 the shapes of the geographic units. The 2020 Decennial Census  
4 data sometimes called the PL data or the PL 94-171 data.  
5 These are the files that are released every decade with the  
6 enumeration of population within the various geographies down  
7 to the block level, then the American Community Survey data  
8 which is data that's released throughout the decade which has  
9 information on characteristics of the population that's not  
10 included in the -- are not included in the Decennial Census  
11 data.

12 Q. And can you just explain for the Court why you would use  
13 data from both the Decennial Census and the American Community  
14 Survey?

15 A. Sure. So the American Community Survey data, as I  
16 mentioned, has information -- excuse me -- about  
17 characteristics of the population that are not in the  
18 Decennial Census data and one of those would be citizenship.

19 So there's a special tabulation of the American Community  
20 Survey data called the Citizen Voting Age Population special  
21 tabulation and that's what I used. ACS stands for American  
22 Community Survey, that's what I used the ACS data for.

23 Q. Great. Now when you were presenting measures of racial  
24 demographic information in the maps you drew, what particular  
25 measures were you looking at?

## B. Esselstyn - Direct Examination

1 A. In general in the body of the report what I focused on  
2 were the BVAP -- BVAP stands for the Black Voting Age  
3 Population -- and the other one that I report in the body of  
4 the report is the Black Citizen Voting Age Population  
5 sometimes abbreviated as the Black CVAP. There are additional  
6 demographic tables in my attachments that go beyond that, but  
7 those were the ones that I focused on in the body of the  
8 report.

9 Q. Those were the primary ones you discuss?

10 A. Indeed.

11 Q. Well, let's unpack some of the differences between Black  
12 Voting Age Population and Black Citizen Voting Age Population.

13 Let me start with this one: Do Black Voting Age  
14 Population and Black Citizen Voting Age Population come from  
15 different sources?

16 A. Yes. The Black Voting Age Population I used, the  
17 Decennial Census data or the PL data for that, whereas the  
18 Black Citizen Voting Age Population comes from the ACS,  
19 American Community Survey data.

20 Q. Are Black Voting Age Population and Black Citizen Voting  
21 Age Population both based on sampling?

22 A. No. Only Black Citizen Voting Age Population is based on  
23 sampling.

24 Q. Do Black Voting Age Population and Black Citizen Voting  
25 Age Population use the same classifications for their

## B. Esselstyn - Direct Examination

1 demographic calculations?

2 A. No, they do not. So the Black Voting Age Population  
3 is -- uses something that's often called any part Black or the  
4 Black alone or in combination measure. So this is essentially  
5 taking anyone who identifies as Black, and that can include if  
6 they also identify as Hispanic or if they are multiracial or  
7 identify as other races.

8 By contrast, the classifications of Black that are used  
9 in the American Community Survey data in the Black Citizen  
10 Voting Population are narrower. That would mean people who  
11 identify solely as Black, people who identify as both Black  
12 and White, and people who identify as Black and  
13 American-Indian or Native American. It does not include  
14 people who identify as Hispanic nor does it include other  
15 combinations of race with Black.

16 Q. Okay. I just want to make sure we're sort of clear on  
17 this. So would -- would Black Voting Age Population include  
18 everybody -- include the classifications that are reported in  
19 Black Citizen Voting Age Population plus some additional  
20 categories that are not in Black Citizen Voting Age  
21 Population?

22 A. That's correct.

23 Q. And can you just summarize for the Court what is in Black  
24 Voting Age Population that would not -- which classifications  
25 would be in Black Voting Age Population that would not be in

## B. Esselstyn - Direct Examination

1 Black Citizen Voting Age Population?

2 A. Sure. I can summarize that. The primary ones that come  
3 to mind would be people who identify as both Black and  
4 Hispanic. In addition, for example, somebody who identifies  
5 as both Black and Asian or Black and Native-Hawaiian Pacific  
6 Islander or combinations thereof.

7 So in 2020 there were a number of people that -- or I  
8 should say increase in the number of people who identified as  
9 multiracial, including combinations of three, four races and  
10 those would not be captured in the more narrow categorizations  
11 of Black that are used in the American Community Survey data.

12 Q. Okay. Is there a significance to different  
13 classifications rolling up into Black Voting Age Population  
14 and Black Citizens Voting Age Population?

15 A. Sorry. I just didn't catch --

16 Q. I'm sorry. I was asking is there a significance to the  
17 fact that different classifications roll up into Black Voting  
18 Age Population and Black Citizen Voting Age Population?

19 A. Yes. So the metrics need to be considered somewhat  
20 differently in that the Black Citizen Voting Age Population,  
21 as I said, is not going to include all the categorizations of  
22 Black people that are included in Black Voting Age Population.  
23 Therefore, it could be considered a more conservative count of  
24 people that identify as Black or -- yes.

25 Q. Thank you. Turning back to some other differences

## B. Esselstyn - Direct Examination

1 between the Black Voting Age Population and Black Citizen  
2 Voting Age Population. Do both those measures have margins of  
3 error?

4 A. No. Only the Black Citizen Voting Age Population.  
5 The -- I'll leave it at that.

6 Q. Why doesn't Black Voting Age Population have a margin of  
7 error?

8 A. The Black Voting Age Population is based on the Decennial  
9 Census counts which are considered an enumeration and those  
10 are reported as counts without any margins of error. Those  
11 are considered the best data available and they're reported  
12 without any margins of error.

13 Q. Is Black Citizen Voting Age Population expressed as a  
14 percentage always going to be lower than Black Voting Age  
15 Population expressed as a percentage?

16 A. No. In fact, often in North Carolina, the Black Citizen  
17 Voting Age Population will actually be higher.

18 Q. Why is that?

19 A. So the Black population in North Carolina tends to have  
20 very high citizenship rates. And when you think about the  
21 Black Citizen Voting Age Population calculation, this is  
22 looking at Black citizens of voting age divided by all  
23 citizens of voting age and there's going to be very few Black  
24 noncitizens that are taken out of the numerator, whereas in  
25 the group that's in the denominator which is all voting age



## B. Esselstyn - Direct Examination

1 citizens that will have had noncitizens removed and in other  
2 racial groups that are higher rates of non-citizenship, so  
3 with that relatively smaller denominator the fraction, the  
4 overall fraction of percentage is often higher.

5 Q. Given that is based on sampling, how can you be confident  
6 that the Black Citizen Voting Age Population numbers presented  
7 in your report are accurate?

8 A. So for the Citizen Voting Age Population, the special  
9 tabulation that I mentioned has been -- it was released for  
10 use in redistricting cases. This is something that the  
11 redistricting community asked for and it's considered the gold  
12 standard. So this is what people rely on that they're doing  
13 analysis of Citizen Voting Age Population.

14 Further, it's become customary for people doing this type  
15 of Gingles I analysis or other analysis to rely on the Citizen  
16 Voting Age Population numbers as they're presented. And as I  
17 mentioned before, they're conservative because they do not  
18 include all the categorizations of Black that BVAP does. In  
19 all likelihood, if those other categorizations of Black were  
20 to be included, the numbers might even be slightly higher.

21 Q. Now, the American Community Survey data that you're  
22 presenting here includes survey data that was taken during  
23 2020 during the pandemic, correct?

24 A. That's correct, yes.

25 Q. Has the Census Bureau reached a conclusion about the

## B. Esselstyn - Direct Examination

1 reliability of American Community Survey data that includes  
2 survey data from 2020?

3 A. Yes.

4 Q. What did the Census Bureau data conclude?

5 A. So in particular I'm thinking about the five-year survey  
6 which is what I rely on and what the Citizen Voting Age  
7 Population special tabulation is based on, five-year samples.

8 So, for example, the period from 2018 to 2022, includes  
9 2018, 2019, 2020, 2021, and 2022. And the Census Bureau  
10 released a document saying they felt that those five-year  
11 estimates were fit for use in a wide variety of uses.

12 MR. FREEDMAN: Troy, can you pull up Plaintiffs'  
13 Exhibit No. 221, please.

14 BY MR. FREEDMAN:

15 Q. Mr. Esselstyn, can you tell us what this document is?

16 A. Yes. This was released in March of 2022, and it's  
17 essentially an assessment of the newly available five-year  
18 estimates by the Census Bureau.

19 Q. Did you rely on this in forming your opinions?

20 A. This has informed my opinions, yes.

21 Q. Now, what in this document do you see that addresses the  
22 reliability of the ACS data that includes the 2020 data?

23 A. In the second half of the first paragraph you can see it  
24 says, "The Census Bureau determined the standard full suite of  
25 2016 through 2020. ACS five-year data are fit for public

## B. Esselstyn - Direct Examination

1 release, Government and business uses."

2 Q. The language that's highlighted on the screen now?

3 A. That's correct.

4 Q. Okay. Thank you.

5 I want to talk a little bit about redistricting criteria.  
6 What does that term mean to you?

7 A. So when one is drawing districts there are a number of  
8 considerations that can be taken into account. Sometimes  
9 these are called criteria; sometimes they're called guidelines  
10 or considerations, but there's a term that's generally used  
11 which is traditional redistricting criteria, and there are  
12 about a half dozen of those that are used in most states and  
13 that includes North Carolina.

14 Q. Are you familiar with the criteria that were used in  
15 drawing the current state Senate map?

16 A. I am, yes.

17 Q. Did you attach a copy of those to your report?

18 A. I did.

19 MR. FREEDMAN: Troy, can you pull up Joint Exhibit  
20 No. 4, please.

21 BY MR. FREEDMAN:

22 Q. Mr. Esselstyn, can you tell us what this document is?

23 A. Yes. This is the adopted criteria by the North Carolina  
24 State Senate for use in drawing their districts in the fall of  
25 2023.

## B. Esselstyn - Direct Examination

1 Q. Just so our record is clear, I'm going to ask you to walk  
2 through a couple of these just to explain your understanding  
3 of the criteria as you apply them in your analysis.

4 Just starting at the top. In the context which we're in  
5 court for, what do you understand equal population to mean?

6 A. So in the case of the Senate with 50 districts, what you  
7 do is take the entire population of the State of North  
8 Carolina and divide it by 50 and that gives you 208,788, and  
9 each of the district's population has to be near that  
10 population within plus or minus five percent.

11 Q. Thank you. I'm going to come back to county groupings  
12 and traversals in a little bit.

13 In this context, what do you understand compactness to  
14 mean?

15 A. Compactness is consideration about the shape of the  
16 district and whether it's more sort of regularly shaped or  
17 oddly shaped and there are alluded to this earlier there are  
18 metrics that provide a numeric score of compactness.

19 The most commonly used ones, certainly in North Carolina  
20 but in other states as well, I would say, are called the Reock  
21 and the Polsby Popper score.

22 Q. Is either of those measures better than the other?

23 A. No.

24 Q. Do they measure the same thing?

25 A. No. One is more area based and one is more perimeter

## B. Esselstyn - Direct Examination

1 based. So they both compare the shape of the district to the  
2 shape of a circle; but as I said, one is focusing more on  
3 mathematical relationships related to area and one is focused  
4 more on perimeter.

5 Q. Now, going down the list, what do you understand  
6 contiguity to mean?

7 A. Contiguity essentially means that a district is all in  
8 one chunk; it doesn't have separate detached pieces.

9 Q. Going down to the next one. In this context, what do you  
10 understand respect for existing political subdivisions to  
11 mean?

12 A. So this document specifies political subdivisions that it  
13 is taking into account meaning county lines, county  
14 boundaries, VTDs, which is analogous to precincts, and  
15 municipal boundaries. And typically, the way this is taken  
16 into consideration is trying to keep those political  
17 subdivisions whole or possible.

18 Q. Does that mean you can't split a political subdivision in  
19 drawing a map in North Carolina?

20 A. Oh, no. No. That splits of all three of these, for  
21 example, are evident in the enacted State Senate map.

22 Q. And why would you need to split a political subdivision?

23 A. Well, sometimes it's unavoidable. For example, if you  
24 have a county with a population that's greater than a district  
25 population, there's no way to fit that entire county into a

## B. Esselstyn - Direct Examination

1 single district.

2 Also sometimes municipalities straddle county lines so in  
3 order -- by keeping counties whole you're dividing a city.  
4 There are also cities that have populations that are higher  
5 than 208,000 people, so it's impossible to fit all of those  
6 into one Senate district. Those are a number of examples.

7 Q. Thank you. So going down to the next criteria on Joint  
8 Exhibit 4, racial data, did you consider race in drawing your  
9 Demonstrative Districts?

10 A. I did, by necessity, but it was one of many  
11 considerations. So I was considering racial data as well as  
12 these other criteria that we've been talking about, other  
13 characteristics of the districts.

14 Q. Did race predominate in drawing any of your districts?

15 A. No. No, it did not. As I mentioned, I was constantly  
16 evaluating how the districts complied with these other  
17 criteria and what their other characteristics were as well.

18 Q. Okay. I'm going to turn now to your analysis in the  
19 report starting with your overview of North Carolina.

20 MR. FREEDMAN: Troy, can we go back to the  
21 demonstrative and pull up slide six please.

22 BY MR. FREEDMAN:

23 Q. Mr. Esselstyn, can you walk us through North Carolina's  
24 demographic information as reported in the 2020 Census?

25 A. I can, yes. So North Carolina experienced significant

## B. Esselstyn - Direct Examination

1 population growth between 2010 and 2020, increase of about  
2 900,000 people so the population increased from about nine and  
3 a half million to 10.4 million.

4 During that time, the Black population also experienced a  
5 significant increase, essentially keeping pace with the state  
6 as a whole. The Black population increased by about  
7 nine percent. During that time, however, the single race  
8 non-Hispanic White population decreased by I believe  
9 0.6 percent.

10 Q. Thank you. Now, I want to turn to the geographic part of  
11 the state that's the focus of this suit.

12 Let me start with the general question. From your review  
13 of North Carolina, did you find that any of North Carolina's  
14 counties are majority Black?

15 A. I did, yes.

16 MR. FREEDMAN: Troy, can you pull up slide 7 which  
17 is Figure 1 from your report.

18 BY MR. FREEDMAN:

19 Q. What does this slide which is Figure 1 show?

20 A. This shows the northeastern part of the state, and the  
21 counties that are shaded in green are counties whose total  
22 population is majority Black, and those counties are Vance,  
23 Warren, Halifax, Edgecombe, Northampton, Hertford, Bertie, and  
24 Washington.

25 Q. Do other counties in this area have a substantial Black

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1 population percentage-wise?

2 A. Indeed, yes. For example, Martin, Chowan, Gates, and  
3 Tyrrell.

4 Q. Did you have any observations about this part of the  
5 state?

6 A. Yes. I think there's an observation that might be more  
7 clearly shown with another map that I provide that shows the  
8 shading by --

9 Q. Let me pull up -- can we go to the next slide. This is  
10 Figure 2 from your report.

11 A. Yes.

12 Q. Does this help?

13 A. Yes. Thank you. So this -- and I can explain briefly  
14 what this map shows.

15 It's a little different here instead of just whether  
16 areas are shaded green or not. Areas are shaded with various  
17 shades of green and the darker the shade indicates the higher  
18 the percentage of the Black population in these -- and these  
19 are voting districts which are analogous to precincts.

20 And you can see in that northeastern part of the state,  
21 the same area that we were zoomed in a little more on before,  
22 there is a substantial concentration of not only  
23 majority-Black precincts but precincts that have significant  
24 percentages of Black population.

25 Q. And just so the record is clear, so this is a Figure 2



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1 from your report, what does -- what do the different colors  
2 signify?

3 A. So there are five different shades of green; and as I  
4 mentioned, the darker the shade the higher the percentage  
5 going from the lowest shade which is essentially to zero to  
6 just under 15 percent to the darkest shade which is 50 percent  
7 and above. And the other shades are all labeled there in the  
8 legend.

9 Q. Is there a name by which people generally refer to this  
10 area of the state?

11 A. I would say, yes. The area with the concentration of  
12 green would be considered the Black-Belt -- Black-Belt  
13 counties or the Black-Belt area of the state.

14 Q. Thank you. Now, there's been some discussion in this  
15 case about Stephenson groupings. Did you consider Stephenson  
16 groupings in your analysis?

17 A. I did, yes.

18 Q. Why -- can you tell us why you considered Stephenson  
19 groupings in your analysis?

20 A. I can, yes. The Stephenson county groupings -- well,  
21 they are mentioned in the criteria document that we were  
22 looking at before, but I'm also familiar with them as a  
23 requirement for drawing legislative districting plans in North  
24 Carolina. It's a requirement that's unique to North Carolina.  
25 And the expectation is that state legislative plans will

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1 comply with the Stephenson ruling.

2 Q. When you refer to the document we were looking at before,  
3 you were referring to Joint Exhibit 4, the Senate Plan  
4 criteria?

5 A. Correct.

6 Q. How did you become familiar with the Stephenson  
7 groupings?

8 A. So I became familiar with the concept of the Stephenson  
9 groupings back in the previous decade I think in 2016 and  
10 became interested in them and then have collaborated with  
11 other folks, including Dr. Mattingly who was just testifying.  
12 One of the reports that was presented during his testimony is  
13 something that I co-authored and that was the one that  
14 presented the county groupings based on the newly released  
15 2020 Census data independent of any VRA considerations.

16 Q. Is there a convenient way to determine the groupings?

17 A. Yes. I would say that the code provided by Dr. Mattingly  
18 and his colleagues makes it possible for folks who have the  
19 skills to apply -- apply that algorithm to a collection of  
20 counties.

21 Q. Now, in terms of the northeastern part of the state, can  
22 you describe the Stephenson groupings?

23 A. I can. The very northeastern most part of the state  
24 has -- all the counties are essentially in two pairs of  
25 groupings and there's --

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1 Q. I think there's a slide on this that may help.

2 MR. FREEDMAN: Troy, can you pull up slide 9.

3 BY MR. FREEDMAN:

4 Q. This is Figure 3 of your report?

5 A. Yes.

6 Q. Can you tell us what Figure 3 is?

7 A. Yes, I can. Figure 3 shows in the northeastern part of  
8 the state two possible groupings of counties that were  
9 initially identified based on the newly released census data  
10 after it came out in 2021, and you can see that the one on the  
11 left has a different configuration than the one on the right.

12 Q. Did you run the Stephenson groupings presented in your  
13 analysis yourself?

14 A. I did not.

15 Q. Where did they come from?

16 A. I got them from Dr. Mattingly or from -- I should say  
17 Plaintiffs' counsel who I understand to have received them  
18 from Dr. Mattingly.

19 Q. Why were you comfortable relying on groupings that  
20 Dr. Mattingly put together?

21 A. As was discussed during his testimony, the algorithm that  
22 he uses was published in a peer-reviewed article in a journal.  
23 It has been extensively vetted by other folks as he alluded  
24 to. It has been used by the General Assembly. I think it's  
25 been used by folks across the political spectrum. I'm not

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1 aware of anyone who has found there to be any flaws or any  
2 reason not to use it.

3 Q. Let's turn to some recent districts that have been drawn  
4 in the northeastern part of the state.

5 MR. FREEDMAN: Troy, can you pull up slide 10  
6 please.

7 BY MR. FREEDMAN:

8 Q. Mr. Esselstyn, this is Figure 5 from your report. Can  
9 you describe to the Court what is Figure 5?

10 A. This shows selected districts from the State Senate  
11 Redistricting Plan that was enacted in 2022 and used in the  
12 2022 elections.

13 Q. And what do you observe about the 2022 map?

14 A. In my report I point out that the majority-Black counties  
15 are divided into four separate districts in this plan and none  
16 of those districts has a majority-Black population measured  
17 either by BVAP or by Black CVAP.

18 Q. Do you have any particular observations about Senate  
19 District 3?

20 A. So Senate District 3 includes a number of the  
21 majority-Black counties. As I said, there are majority-Black  
22 counties that are in three other districts, but it does  
23 include a number of them in that left half and then there --  
24 on the right side going over to the coast is another chunk  
25 that is connected by a pretty narrow connection.

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1 Q. Just so our record is clear, can you identify the  
2 counties you're talking about or you're referring to?

3 A. Yes. The majority-Black counties in District 3 would be  
4 Warren, Halifax, Bertie, Hertford, and Northampton.

5 Q. And the area off to the east that you refer to?

6 A. Yes, Camden, Currituck, and Tyrrell.

7 Q. Now, do you have any observations about the area  
8 surrounding Senate District 3?

9 A. In general I would say that you can see that there are  
10 areas that have some concentration of Black population but not  
11 as -- not to the extent that District 3 does.

12 Q. And are there particular areas that you're referring to?

13 A. For example, the Pitt-Edgecombe district, District 5.

14 Q. And any other areas?

15 A. I would say that the other three districts that contain  
16 at least one majority-Black county, so that would be District  
17 1 containing Washington County. I mentioned District 5  
18 already; and District 11, which includes Vance County.

19 Q. Thank you.

20 MR. FREEDMAN: Troy, can we pull up the next slide.  
21 I just want to walk through the demographics of the '22 map.

22 BY MR. FREEDMAN:

23 Q. This presents Figure 5 from your original report and  
24 Table 1A from your rebuttal report. Let's just start, what  
25 is -- what is table 1A?

1 A. Table 1A shows a number of characteristics of a selection  
2 of districts from the enacted 2022 plan, population  
3 characteristics, the deviation two measures of the Black  
4 population, and then two compactness measures.

5 Q. Now, I'm just going to flag that we're looking at -- the  
6 demographic data is from your rebuttal report.

7 Can you just explain again so it's clear why you updated  
8 the numbers in your rebuttal report?

9 A. Yes. So after I submitted my initial report, there were  
10 data made available that I did not have access to at the time  
11 I submitted my initial report and those data enabled me to do  
12 a Black CVAP calculation using more up-to-date data, and  
13 that's what's shown here in the third column from the right.

14 Q. Does anything in Table 1A stand out to you?

15 A. I think the fact that none of the districts have a  
16 majority BVAP or Black CVAP.

17 Q. How would you characterize the BVAPs and Black CVAPs as  
18 depicted in Table 1A?

19 A. You can see that there are some that are over 40 percent  
20 and then others that are in the 30-ish percent range; but as I  
21 said, none that are close to 50 or over 50?

22 THE COURT: It's time for our evening recess. My  
23 watch is accurate. That's a little slow. It's 5:00 o'clock.

24 We'll be in recess until 10:00 a.m.

25 The witness will be back up on the stand at

1 10:00 a.m.

2 \* \* \*

3 (The proceedings concluded at 5:00 p.m.)

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1 UNITED STATE DISTRICT COURT  
2 EASTERN DISTRICT OF NORTH CAROLINA  
3

4 CERTIFICATE OF OFFICIAL REPORTER  
5

6 I, Amy M. Condon, CRR, RPR, CSR, Federal Official  
7 Court Reporter, in and for the United States District Court  
8 for the Eastern District of North Carolina, do hereby certify  
9 that pursuant to Section 753, Title 28, United States Code,  
10 that the foregoing is a true and correct transcript of the  
11 stenographically reported proceedings held in the  
12 above-entitled matter and that the transcript page format is  
13 in conformance with the regulations of the Judicial Conference  
14 of the United States.  
15  
16

17 Dated this 26th day of February, 2025.  
18

19 *Amy M. Condon*

20 /s/ Amy M. Condon  
21 Amy M. Condon, CRR, CSR, RPR  
22 U.S. Official Court Reporter  
23  
24  
25